United States Court of Appeals

for the Second Circuit

APPENDIX

76-2046

United States Court of Appeals

FOR THE SECOND CIRCUIT

JERRY GOMBERG,

Petitioner-Appellant,

v.

LOUIS GRECO, Warden of the New York City Men's House of Detention of Rikers Island, or any other person having custody of Jerry Gomberg,

Respondent-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

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249 Press of Fremont Payne, Inc., 417 Canal St., N. Y.—966—6570

UNITED STATES COURT OF APPEALS
FILED
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SECOND CIRCUIT

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PLAINTIFFS

JERRY GOMBERG

DEFENDANTS

WYATT, J.

LOUIS GRECO, WARDEN OF THE HOUSE OF DETENTION FOR MEN OF THE CITY OF NEW YORK.

4/23

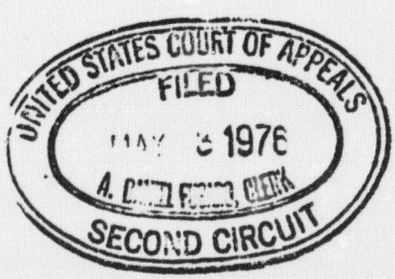
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CAUSE

HABEAS CORPUS.

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	DATE	RECEIPT NUMBER	C.D. NUMBER	CARD	DATE MAILED
	FEB 13 1976	Transfer		JS-5	
				JS-6	4-12-76

[illegible] TORCO, WAINE, ETC.

JUDGE WYATT

PROCEEDINGS

02-13-76		[illegible] from the Eastern District of Brooklyn, this date, Docket Sheet, Order of transfer, & Petition.
		[illegible] in the U.S.D.C. S.D.N.Y.
02-13-76	1.	Filed Petition for Writ of Habeas Corpus.
	2.	Filed Affidavit & Order to Show Cause by Petitioner why a Writ of Habeas Corpus should not issue herein as prayed, etc, as indicated rtble before Wyatt, J. on 3-5-76.
	3.	Filed Affidavit of Service of Order To Show cause d d. 2-13-76.
3-16-76	4.	Filed defts affidavit in opposition to petition for A Writ of Habeas Corpus and for rel ase from custody on bail pending determination of petition.
3-16-76	5.	Filed Memorandum of Law as indicated.
3-22-76	6.	Filed Petitioner's affidavit in reply to the answering affidavit of Richard H. Gingold as indicated.
4-2-76	7.	Filed memo endorsed on Order to Show Cause dtd 2-13-76: This Application is in all respects denied as indicated. Wyatt, J. M/N.
4-14-76	8.	Filed Petitioner's Affidavit & Notice of Motion rtble before Wyatt, J. on 4-16-76 or as soon as counsel can be heard the issuance of a certificate of probable cause purs. to 28 U.S.C. Sec 2253 etc, as indicated.
4-15-76	9.	Filed defts affidavit in opposition to petitioners motion for the issuance of a Certificate of probable cause etc, as indicated.
4-16-76	10.	Filed memo endorsed on motion filed 4-14-76. The motion for a certificate of probable cause is granted, Wyatt, J. M/N.
4-23-76	11.	Filed Notice that petitioner hereby appeals to the U.S.C.A.P. from the order of Wyatt, dtd. 4-1-76. M/N.

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk

By [signature]
Deputy Clerk

UNITED STATES ex rel. JERRY GOMBERG,
Petitioner,
-v-
LOUIS GRECO, Warden of the New York City Men's House of Detention of Rikers Island, or any other person having custody of JERRY GOMBERG,
Respondent.

76 Civ. 733

This is an application by a state prisoner (Gomberg) for a writ of habeas corpus (28 U.S.C. § 2254).

Gomberg and another defendant were convicted after jury trial before Mr. Justice Denzer in Supreme Court, New York County, of arson in the second degree on December 20, 1973.

After this conviction, a motion for a new trial was made (asserting (among other things) that perjury had been committed by prosecution witnesses), and Mr. Justice Denzer held a hearing which commenced on February 28, 1974. After receiving extensive evidence relating to the many grounds on which the motion was based, Mr. Justice Denzer denied the motion on April 19, 1974, with an oral opinion dictated from the Bench. (SM 1671-1707)

Gomberg's conviction was unanimously affirmed without opinion by the Appellate Division, First Department. People v. Gomberg, 362 N.Y.S.2d 332 (Dec. 3, 1974)

The New York Court of Appeals then unanimously affirmed Gomberg's conviction with an opinion by Judge Jasen. People v. Gomberg, 38 N.Y.2d 307, ___ N.Y.S.2d ___ (Dec. 29, 1975).

In support of his application to this Court for a writ of habeas corpus, counsel for petitioner presents a long list of "Facts" (presumably, points) relating to the conduct of the trial at which Gomberg was convicted. After carefully reviewing petitioner's arguments as well as the voluminous record of the trial (supplied by the District Attorney, New York County), it appears that the points worthy of mention fall broadly into two categories: the District Attorney's alleged subornation of, and acquiescence in, (1) perjury to conceal improper attempts to make the testimony of prosecution witnesses appear consistent and (2) perjury to conceal the interest of witnesses in testifying for the People.

With respect to the first category, the record fails to disclose any convincing evidence that Assistant District

Attorney Kavanaugh knowingly permitted the introduction of perjured testimony designed to conceal attempts to reconcile conflicts in the testimony of the various witnesses. Indeed, a review of the record discloses many conflicts in the testimony; this is admitted by counsel for the petitioner (see Affidavit (p.2) attached to petitioner's application).

With respect to the second category, allegedly perjury designed to conceal the interest of prosecution witnesses, the record also fails to disclose any convincing proof. It is true that the record is confusing as to whether Assistant District Attorney Kavanaugh permitted witness Hatton falsely to testify that no public official had ever advised him that his cooperation would inure to his benefit. This confusion stems from an effort by Kavanaugh to distinguish between promises made to the witness by officials other than himself and any such promises made personally by Kavanaugh. While the record is thus confusing, it does not reflect any involvement by the prosecutor in the offering of perjured testimony. Moreover, the prosecution's case contained overwhelming evidence against Comberg, wholly aside from the testimony of Hatton.

This application is in all respects denied.

SO ORDERED.

Dated: April 1, 1976

ROGER N. WYATT
United States District Judge

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THE COURT: Will you, please, let me get the factual situation straight here?

MR. KASNER: The wife of Nick Valentine, the mother of his child with whom he lives and his partner when you will hear in this case, Charlie Schnapstein in the massage parlor were indicted over a year ago for bribery. Their case has not come up. Their case has not come up despite the fact that I tried their case which started the same day. I started their case months ago.

THE COURT: You mean, the bribery case is being held--

MR. KASNER: Over Nick Valentine's head.

THE COURT: You can't argue that here. You can bring out the fact that you intend to show certain facts.

MR. KASNER: That's exactly what I intend to show here.

THE COURT: It will be your position that this is another case that is being held over--

MR. KASNER: Over the head of Nick Valentine,

have to infer it or not infer it from his testimony.

As to Christopher Hatton, I'm going to prove that Chris Hatton one day serving a sentence walked out of jail before the end of his sentence. How he walked out of jail, I don't know, but he walked out of jail and went back out on the street, on 42nd Street and started working on 42nd Street; got a regular job in a regular place. After being there for a period of months, he somehow is back in jail.

Now, it's a peculiar incident because most of the prisoners in jails don't take sabbaticals for periods of months. But it's peculiar that the sabbatical took place shortly after he gave certain testimony to the DA relating to this case. Chris Hatton still hasn't finished his sentence and is back in jail.

These are the people that the prosecution will ask you to believe, every one with records; all but one with long records; every one with long-time facing them.

I forgot to tell you about Chris Hatton.

did you own it yourself, or did you have some partners?

A Yes, I had myself before they came in.

Q I see. And, after you started it on your business yourself, did you take in any partners?

A Yes, the three defendants.

Q So if I understand you correctly, during 1972, you were partners with the defendants in the French Model Studio for a period of time? The Harem, the Geisha, is that correct?

A Yes, right.

Q Now, in July of 1972, were the defendants partners with you in the French Model Studio?

A In July.

Q In July of 1972?

A By that time it was broken up.

Q And, did the defendants still have an interest in the French Model Studio at that time?

A No, they didn't.

Q Now, what caused this termination?

A Well, I felt that I was being cheated, and they pushed me out, you know, like I was just pushed out, and that's it, money and you are out.

Q Why were you left with the French

Model Studio?

A Well, it was a little place and it wasn't making much and because the lease is in my name, and it is harder to get hold of that.

Q Now, in July of 1972, Mr. Valentine, did you ever have any discussions with any or all of the defendants concerning the prices that you were charging at the French Model Studio for a massage?

A Yes.

Q Where did those discussions take place, do you recall?

A Well, at the Dixie Hotel.

Q And, when did those discussions take place? Do you have any idea?

A Well, roughly one was before the fire in the place, and one was after it.

Q Now, the discussion that occurred before the fire at the French Model Studio, what was said and by whom?

A Well, I can't remember verbatim, but in fact, they were trying to organize the whole town and get the prices, everyone had to fall in step or else.

Q Well, specifically do you recall any of the defendants saying that?

A Yes, well, Marty, you know.

Q What did he say?

A Well, Marty said that words to the affect that I was out of step with everybody else, and I had to get in line because they were organizing the whole thing to meet their prices.

Q What is the -- withdrawn.

Was any mention made to you at that time of a massage parlor called the Palace?

A Yes, if I didn't, he said, if I didn't get in line, and straighten out, he said the same thing would happen that happened in the Palace.

Q Do you recall which one of the defendants or all of the defendants said that to you?

A Well, I remember Marty starts alot of sentences and Jerry finishes them for him.

It is a combination of the two together.

Q Do you recall if Jerry Kaplan said anything concerning the Palace and the price you were charging at the French Model Studio?

A He just said I was stupid and stubborn.

MR. KASNER: Objection, I move to strike the characterization of stupid.

A I have heard other people were approached.

Q Who?

A I don't know if I remember the names. Other places were approached. Like the guy at the Palace was approached.

Q Did he tell you that?

A I heard it.

Q Did he tell you that?

A Not directly, he didn't tell me.

Q When you met with them at the Dixie, the first time before any fire, would you tell the Court and the Jury who was there?

A There was George, Jerry, Marty.

THE COURT: You are referring to the three defendants in this case?

THE WITNESS: The three defendants in this case and two or three other guys that kept going and coming. Came in for awhile and left.

Q Do you know who they were?

A No.

Q You don't know their names?

A No.

Q Who invited them?

MR. KAVANAUGH: Objection - - withdrawn.

THE COURT: If you know?

A I didn't invite them.

Q You didn't invite them?

A N

Q And you d n't know their names?

A No.

Q Were you drunk then?

A No.

Q You were s ber?

A That's right.

Q Were you drinking?

A I had a few drinks, yes.

Q Did you know a man named Alex?

A I knew a man named Alex in my life.

Q On that particular occasion, was a n named Alex there?

A I don't remember the names of who was there. I didn't know these guys.

Q You didn't know them?

A No.

Q Were they participating in the conversation?

A Not the part we were talking about.

Q What pa[illegible] were you talking about?

A We were talk[illegible]o Morty and George, the conversation was goi[illegible]on at the table, which I wasn't paying attenti[illegible]n to. We were talking about accidents that happened a long time ago.

Q How long were you there?

A I don't know, 45 minutes, an hour or something.

Q In that 45 minutes, all you ca[illegible]remember is two or three sentences, is that correct?

A I remember the things that were important to me at the time.

Q Do you recall after leaving the Harem and the Geisha House coming back sometime, in 1972, with a gentleman called Nino Valdez?

A Coming back to the Harem from Europe, you mean?

Q After coming back from Europe entering the Harem with Nino Valdez?

A Not coming back from Euro[illegible], no. I was with Nino quite a few times after these accidents.

Q Who was Nino Valdez?

A He used to work for us at the place.

Q What was his occupation?

A I testified I had seen her a few weeks ago.

Q Now, when you were seeing her, were you, at all times, accompanied by those two detectives and the fire marshal?

A That's right.

Q They were in the room with you at all times?

A That's right.

MR. KASNER: Again, your Honor, I would like to keep him available.

THE COURT: No further questions, I presume?

MR. KAVANAUGH: No further questions.

THE COURT: You are excused but, remember, Mr. Valentine, that you must appear here if you are asked to testify again. Keep yourself available. Thank you.

(The witness was excused).

THE COURT: Call your next witness, please.

MR. KAVANAUGH: May we approach the bench, your Honor.

(Whereupon, a side-bar conference was held out of the hearing of the Reporter).

A Yes, sir.

Q Where were you working at that time; do yourecall?

A The Geisha House, 414.

Q At that time, was there a massage parlor located at 410 West 42nd Street called the Palace?

A Yes, sir.

Q Did you ever have any discussions with either Mr. Kaplan, Mr. Comberg or Mr. Hodas concerning the massage parlor located at 410 West 42nd Street, the Palace?

A Yes, sir.

Q Did you ever have any discussions with them concerning the prices that were being charged at the Palace Massage Parlor?

A Yes, I did.

Q When did those discussions take place; do you recall?

A It was in the latter part of April.

Q Now--

A (continuing) 1972.

Q As a result of those discussions, did you do anything in relation to the Palace Massage

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Parlor

A Well, I broke the front windows out.

Q Why did you break the front windows out?

A They were very dissatisfied with the prices.

Q When you say "they," who are you referring to?

A Mr. Kaplan, Mr. Hodas and Mr. Gomberg.

Q How did they communicate that to you? What was said and by whom?

A Mr. Gomberg indicated and Mr. Kaplan indicated and Mr. Hodas indicated they were dissatisfied with the prices.

Q In what way?

A That the Palace was charging-- because at the Palace they were charging $10 a session and at the Geisha House, they were charging $12 a session.

Q Do you know who owned the Palace?

A Danny Laura and, I believe, Jerry Schwartz.

THE COURT: Excuse me. When did all this occur?

THE WITNESS: In the spring of 1972, your Honor.

Q Do you know a person by the name of

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Dexter Morton?

A Yes, sir.

Q Do you know a person by the name of Earl Jones?

A Yes, sir.

Q Now, do you know where Mr. Morton and Mr. Jones were working in the summer and spring of 1972?

A They were working with me in the Geisha House.

Q They were also employed by Mr. Kaplan and Mr. Gomberg and Mr. Hodas; is that correct?

A Yes, sir.

Q Now, do you recall at any time, there ever being any discussions in the spring of 1972 between yourself, Mr. Morton and the defendants about a fire at the Palace Massage Parlor?

A Well, in the latter part of April, it was indicated to me by Mr. Kaplan, Mr. Gomberg and Mr. Hodas, that theywanted the place out of business.

THE COURT: They what?

THE WITNESS: They wanted the place out of business. They wouldn't be in the business any more.

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MR. KASNER: I would like to move to strike the answer, this business about "being indicated to me by three people."

THE COURT: Objection sustained.

Will you say what the conversation was, please?

THE WITNESS: There was a meeting in the office between Mr. Kaplan, Mr. Gomberg and Mr. Hodas and myself. I'm not sure if Mr. Morton was present at that time. Mr. Gomberg, Mr. Kaplan and Mr. Hodas -- I don't know how you want me to say -- indicated to me or said to me they would like to see the place out of business.

MR. KASNER: Objection, your Honor.

THE COURT: Overruled.

They said to you: Is that correct?

THE WITNESS: They said to me.

MR. KASNER: Your Honor, is this a chorus of three of them saying the same thing simultaneously, your Honor?

THE COURT: Do you remember which one said what? There was a general conversation

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between the three defendants and yourself; is that correct?

THE WITNESS: Yes, sir.

THE COURT: Now, do you remember anybody asking any specific -- or making any specific statement to you?

THE WITNESS: They all three made specific statements to me, your Honor.

THE COURT: You only remember the conversation, generally; is that correct? You don't remember what any particular one said?

THE WITNESS: I don't want to say who said what, if I don't recall.

THE COURT: Did all three of them participate in the conversation?

THE WITNESS: Yes, sir.

THE COURT: Continue, Mr. Kavanaugh.

DIRECT EXAMINATION (continuing):

BY MR. KAVANAUGH:

Q At any time, was anything said about how the Palace was to be put out of business, to the best of your recollection.

A I suggested that I break it up.

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Q With what?

A With a bar; go through the front; break it up with a bar; break it up with a hammer.

THE COURT: Who suggested that?

THE WITNESS: I did, your Honor.

Q Did you do anything to further that idea along? Did you take any action?

A Mr. Hodas said to me it wasn't a good idea; they would know who did it, "they," meaning the owners of the French-- I mean, the owners of the Palace.

Q I see. Well, did you ever take a trip into the Canal Street area, into Chinatown as a result of that discussion with either of them the three defendants?

A I believe, Mr. Kavanaugh, that was the second fire.

Q I'm sorry?

MR. KASNER: I would appreciate if Mr. Kavanaugh wouldn't lead the witness with questions like that, taking trips into Chinatown, et cetera.

THE COURT: Also, Mr. Kavanaugh, if you phrase your questions in terms of what

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the witness did.

I know you have to make references to certain places and so on.

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THE COURT: All right, I prefer also Mr. Kavanaugh if you phrase your questions in terms of what the witness did. I know you have to make references to certain points.

MR. KAVANAUGH: All right, Your Honor.

DIRECT EXAMINATION

BY MR. KAVANAUGH: (Continued)

Q Did there come a time ~~xx~~ prior to the fire at 410 West 42nd Street Mr. Hatton that you had occasion --

MR. KASMER: Objection, Your Honor. It is going to be a leading question.

THE COURT: Go ahead.

MR. KAVANAUGH: Your Honor, this thing took place a year and a half ago.

THE COURT: Objection overruled.

MR. KAVANAUGH: Thank you.

Q Did you have occasion to put together any type -- put gasoline in a bottle pursuant to the idea of setting a fire in the French -- in the ~~Exkxx~~ Palace Massage Parlor?

A Yes.

Q How did that come about, what did you

do?

A I had a ~~m~~ quart. I believe it was a quart wine bottle and it was, I was given a diagram of how to make a fire bottle.

Q Who gave you the diagram?

A Mr. Hodas.

Q Did you subsequently put together a fire bomb?

A Yes, I did.

Q Where did you do that?

A I did it in the Geisha house.

Q Was anybody present with you when you did it?

A Yes, sir, Mr. Morton.

Q Did you have any conversation with any of the defendants about prior to putting this bottle of gas together, did you have any ~~xxxx xxxxxxxxxxx~~ conversation with them concerning the fire at the Palace Massage Parlor?

A Well, I was instructed to ~~xxxxxx~~ scorch the front.

Q By who?

A I don't recall who said this. It was one of the three defendants. I don't recall who said this,

Mr. Kavanaugh.

Q Where was this statement made?

A In the Geisha House.

Q Did you have -- after you put this bottle together, did you have any other discussion with any of the other defendants concerning the Palace Massage Parlor prior to the fire?

MR. KASNER: Your Honor --

THE COURT: Just a minute.

MR. KASNER: Never mind.

A Yes.

Q Where did those discussions take place?

A In the Geisha House in the front of the Geisha House inside and also in the office on the second floor.

Q Who was present?

A Mr. Hodas, Mr. Kaplan, Mr. Comberg.

Q What, if anything, was said by Mr. Hodas during these discussions that you recall?

A When are you going to do it.

Q And, was anything else said by Mr. Hodas that your recall?

A I was offered a sum of money, by Dexter, and

I will use Dexter or Mr. Morton if you want to call him.

Q How much money were you offered?

A I Believe it was five hundred dollars.

Q Do you recall if any of the defendants had made a similar offer to you?

A Well, Mr. Kaplan at one time, Mr. Gomberg at one time and Mr. Kodas at one time.

Q Had done what?

A Had offered me, Dextery Morton -- money to set the Palace on fire.

Q How much money?

A Approximately five hundred dollars.

Q I see.

Were there any other discussions between yourself and the defendants prior to the fire being set at the Palace Massage Parlor?

A I asked Mr. Kaplan and Mr. Gomberg if I couldn't break it up, and I didn't want -- I didn't think it was wise to set the place on fire.

Q And, what was their reply, do you recall, what did Mr. Kaplan say when you said that to him?

A I didn't have any guts.

Q And, what did Mr. Gomberg say, if

anything?

A I can't quote word for word, Mr. Cavanaugh. I mean I don't --

Q To the best of your recollection, what was said Mr. Hatton?

A Get on with it, do the job or we will get our xx own people.

Q Mr. Hatton, who said that?

A That was Mr. Hodas.

Q Now, do you recall at any time any of the defendants ever saying anything to you about having Dexter Morton set the fire?

A I recall that very well.

Q Who said -- what was said?

A It was said, it was said get the niger to do it. He will do anything you say. I recall that very wdl.

Q Do you recall who said that?

A I believe it was Mr. Gomberg.

* Q Now, do you recall if there was a fire at the Palace Massage Parlor in the spring of 1972?

A It was around May 9th or May 10th.

Q And, how did you find out about the fire?

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6 Hatton - People - Direct x6 153

A I came to work that day and there wasn't anything left of the place.

Q I see.

Now, the night before the day you came to work, and saw that this -- that apparently something had x happened, did you have any conversations with the defendant, with Dexter Morton?

A Yes, sir, I did.

Q Where did that conversation take place?

A In the Geisha House, and also in the 140 Club. It is a bar at 140 West 44th Street.

Q Now, after you came to work and saw that a fire had taken place at the Palace Massage Parlor, did you at any time after that have a conversation with anyone of the three defendants concerning the Palace Massage Parlor?

A Is this the night before the fire?

Q No, the day after.

A The day after? I opened the place about, I guess, it was at 10:30.

Q What place is that?

A The Geisha House, and Dexter was inside, can I say this as I remember it?

Q Go ahead, please.

A And, I was kind of surprised at the way the place was burned.

Q Do you recall seeing either one of the three defendants that day?

A That day, yes, sir.

Q Did you talk to them about the Palace Massage Parlor?

A I called Mr. Kaplan, and I told him that it was done.

Q You called him how?

A At his house.

Q On the telephone?

A Yes.

Q And, what did he reply to that?

A All right, don't say anything on the phone. I will be down.

Q I see.

Did you later see Mr. Kaplan that day?

A Yes, sir. Mr. Kaplan and Mr. Gomberg.

Q Did you talk with either Mr. Kaplan or Mr. Gomberg about the fire at 410 West 42nd Street?

A Yes, sir.

Q What does that -- what did you say to Mr. Kaplan and Mr. Gomberg and what was said to you

and by whom?

A Well, when we -- well, we were congratulated.

Q You say you were congratulated. Who congratulated you?

A Well, all three, Mr. Kaplan, Mr. Gomberg and Mr. Hodas. Mr. Hodas came later.

Q What did Mr. Kaplan say to you when he congratulated you?

A Wonderful job, very good job.

Q What did Mr. Gomberg say to you when he say it?

A The same thing, pretty good job.

Q You indicated Mr. Hodas came in later?

A Yes.

Q What did Mr. Hodas say to you?

A Pretty much the same thing, beautiful job.

Q Did you see Mr. Hodas approach Mr. Norton and say anything to Mr. Norton?

A He shook his hand.

Q Do you recall him saying anything when he shook his hand?

A He said you did a good job, wonderful job.

Q Now, do you know whether -- where the

French Model Studio was located in July of 1972?

A Yes, sir.

Q Where was it located?

A 436 West 42nd Street.

Q Now, in July of 1972, do you recall if there was a fire at the French Model Studio?

A Of 1972? That was around the end of July, wasn't it? The best I can recall was around the twenty-fourth or twenty-fifty, or twenty-sixth.

Q You do recall a fire took place?

A Yes, sir.

Q Do you recall having, prior to that fire, do you recall having a discussion with any of the defendants concerning the French Model Studio and a fire at that location before you, ~~MR~~ before the fire took place?

A Yes, sir.

THE COURT: Excuse me, the fire at the Palace was in what month?

THE WITNESS: It was, I believe it was around May 9th or May 10th, Your Honor, of 1972.

Q And, the fire at the French Model Studio took place in late July of 1972, is that correct?

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A Around the 24th or 25th.

Q Now, prior to the fire at the French Model Mark II Studio, Mr. Hatton, did Mr. Hodas ever say anything to you about a fire at that establishment?

A Well, there were a got of things said to me, a lot of things said to Dexter Morton.

Q What do you recall being said to you by the defendant Hodas?

A That their prices were ten dollars for a massage and twelve dollars at the gym Geisha House.

Q And, did he ever make any specific reference to you about what was to be done?

A Like I said there were a lot of things said to me by all of the defendnts. There was a meeting in the office on the second floor of the Geisha House.

Q Who was present at that meeting?

A I believe Dexter Morton was there. I think. I'm not going to say for sure if I don't know.

Q Were any of the defendants present at that time?

A They were all there.

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Q Now, do you recall what, if anything, was said at that meeting by anyone of the defendants?

A There was dissatisfaction about the French Model Studio open, and that it was only opened for business, and a couple of girls left the Geisha House to work in the French Model Studio.

Q Do you recall if any of the defendants had at any time prior to the fire at the French Model Studio asked you to set a fire at that location?

A To not set a fire at the French.

Q Yes.

A Well, Mr. Kavanaugh, first I suggested that we, again, that we break it up, you know, bust the windo out.

Q You suggested that to whom?

A I suggested it to all of the defendants.

Q In terms of busting up the French Model Studio, what did you do?

A Well, Mr. Combegrg and I went down. It was in the Cannal Street area. I don't remember where. It was a hardware store. We brought a twelve ounce sledge hammer, a pinch bar, a big crow bar, I guess a big hammer and we came back to the Geisha House

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and put it in it, like this was a little ~~mm~~ alcove, 159
something like this.

Q Did Mr. Gomberg at any time every say what he wanted you to do with reference to that sledge hammer in the French Model Studio?

A Break it up.

Q Did you ever ~~k~~ go into the French Model Studio and break it up?

A No, sir.

Q Was there ever any discussion between yourself and any of the ~~defendants~~ defendants about your failure to go into the French Model Studio to break it up?

A Yes, sir.

Q What was said and by whom?

A Well, Mr. Kodas, Mr. Gomberg and Mr. Kaplan, and I don't know about using the word indicated, they said to me that what are you going to do? What are you going to do. This is approximately the 15th of July, 16th, somewhere, about ten days before the actual fire.

When are you going to do something about it. You don't have any guts. If you want me to use the word can I use that word?

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Q Go ahead.

A You don't have any balls, like that.

Q Now, after you had -- do you recall any of the defendants ever mentioning anything to you about setting a fire in the French Model Studio, after you had this discussion?

A Yes, sir.

Q Who said what?

A Mr. Gomberg said, "Why don't we Scorch the front. We don't have to set the place on fire." Mr. Kaplan -- I believe Mr. Modas rather agreed to this, and Mr. Kaplan said if you go to do it, do it right and don't screw it up.

Something like that, things are not exactly like their words, because I don't have that good a memory, but this is the gist of what they said. I recall that.

Q Now, where was this statement made, do you recall, Mr. Hatton?

A In the Geisha House.

Q Was anyone else present aside from yourself and the three defendants?

A Mr. Morton.

Q Now, do you recall if either you or

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Mr. Morton was ever offered any money by any of the defendants to set a fire in the [redacted] French Model Studio?

A I believe it was somewhere around one hundred dollars something like that.

Q Who offered you one hundred dollars?

A Well, all three of them did.

Q Do you recall specifically anyone mentioning the figure one hundred dollars, anyone of the three defendants?

A Well, Mr. Hodas and Mr. Goldberg and Mr. Kaplan.

MR. KASNER: Objection, Your Honor. I move to strike the entire answer unless he says they did it as a chorus.

THE COURT: Sustained. Will you try to rephrase the question, Mr. Kavanaugh.

MR. KAVANAUGH: Yes, Your Honor.

Q Mr. Hatton, who --

MR. KAVANAUGH: Your Honor, I would ask that if the defendants have anything to say, they can do it outside, out of the hearing of the jury.

THE COURT: There is a little too

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much noise at the defense table, so please.

Q Now, Mr. Hatton, do you specifically recall any one of the three defendants mentioning the figure one hundred dollars to you in reference to the fire at the French Model Studio?

A Well, it wasn't said in a chorus, Mr. Kavanaugh.

I don't understand the chorus thing. Mr. Gomberg ~~offered~~ offered me one hundred dollars. Mr. Hodas offered me one hundred dollars, and Mr, Kaplan offered me one hundred dollars.

Now, it was offered to Mr. Morton too, I believe.

THE COURT: Did each of them at one time say something about one hundred dollars?

THE WITNESS: Yes, sir.

Q Now, did you have any discussion after that meeting about setting the fire?

A There was a lot said Mr. Kavanaugh. Why didn't you break it up, I'm not going to try to quote words for you. What happened a year and a half ago is impossible to remember word for word. But, there were a lot of discussions among the three defendants. Why didn't you do it; when are we going

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having a conversation with the fire marshall at the fire marshall's offices?

A After the second fire.

Q Yes, after the second fire.

A Yes.

Q And, when in relation to the second fire, how much time after the second fire did that conversation take place?

A I would have to guess, I would have to guess, and I would have to say a month and a half. I would have to guess at that.

Q And, a month and a half after the second fire?

A Yes.

Q And, did you tell the fire marshalls everything that you told the jury here today?

A No, sir.

Q Do you recall after being at the fire marshalls office having a discussion with Mr. Seymour Detsky, the law firm of Kasner and Detsky?

A I had it after I was at the fire marshall's office.

Q Yes.

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A I had discussions with Mr. Detsky and Mr. Kaplan and Mr. Gomberg at the Mykinos Restaurant.

Q And, did that take place after you had talked with the Fire marshalls about the fire?

A About a week after.

Q And, do you recall if you were asked at that time to write out any kind of statement as to, concerning the fires at the 2 French Model Studio and the Palace Massage Parlor?

A Well, I was asked if I would have a drink with them. I was asked that in front of the Geisha House by Mr, Kaplan and Mr. Gomberg, and I was driven to the Mykinos Restaurant. It was Mr. K Detsky, Mr. Detsky was there, a couple of fellows who I don't know who they were and Mr. Kaplan and Mr. Gomberg.

THE COURT: Excuse me, when was this now, Mr. Hatton?

THE WITNESS: Approximately a week after the fire, Your Honor, the second fire. May the 10ty. I guess around the 15th or 16th of May.

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Q Now, you say the second fire, are you referring to the fire in July or the fire in May?

A The fire in July, the fire at the French.

Q And, when did you meet with Mr. Detsky and Mr. Kaplan and Mr. Gomberg?

A Roughly a week after that, after I had been released from the District Attorney's office.

THE COURT: You mean sometime around August 30th -- you are talking about the second fire.

THE WITNESS: Yes, around August 1st around August 1st, Your Honor. Roughly a week. I don't remember the exact day.

Q Now, when you say you were released from the District Attorney's office, do you recall speaking to any Assistant District Attorney about this case, prior to speaking to the fire marshalls?

A Not prior to speaking to the fire marshalls. First, I spoke to the fire marshalls, and then they picked me up at 149 West 152nd Street.

Q I see. When was that?

A I'd say a month. I really can't-- I'd have to say a month and a half.

Q A month and a half when the second fire--

A (interposing) I'm under oath. I don't want to say a month and a half if I don't think it's a month and a half. I'd say, maybe. I'll say a month and a half, roughly.

Q A month and a half, to the best of your recollection, after the fire at the French Model Studios; is that correct?

A To the best of my recollection, yes.

Q Now, prior to meeting with the fire marshals and discussing this case with them, did you discuss the case with Mr. Detsky, Mr. Kaplan and Mr. Gomberg?

A I was requested to fill out-- what the heck would you call it-- it was on a yellow legal pad; a statement. I guess that's what you call it.

Q And, did you make that statement out after you spoke to the fire marshals or before you spoke to the fire marshals?

A After I spoke to the fire marshals.

Q And, do you recall what you put down in that statement?

A That I didn't know anything about the fire; to the best of my knowledge that Mr. Kaplan didn't know anything about the fire; Mr. Gomberg didn't know anything about the fire; nobody knew anything about the fire. I signed my name to it and somebody witnessed it. I knew that.

Q Now, do you recall speaking with a representative of the New York County DA's Office some time after you had discussed the fires with the fire marshals?

A Yes, sir.

Q And, can you tell this jury whether or not you told the DA the same thing that you have related to this jury today concerning your participation in the fires at 410 West 42nd Street and 436 West 42nd Street?

A I didn't tell them the same thing that I told them today.

Q Now, Mr. Hatton, have you ever been convicted of a crime?

A Yes, sir.

Q Would you describe to the jury, to the best of your recollection, the crimes for which you have been convicted?

A Possession— well, conviction, possession of a forged instrument, forgery, theft of service, possession of stolen property. This is to the best of my recollection now.

Q O. K. Fine.

A (continuing) False statement on the United States passport; false application. False application, I think you call it.

Q Now, when was the first time that you can recall speaking to me about this case?

A About this particular case? Well, yesterday afternoon.

MR. KAVANAUGH: Thank you very much. I have no further questions.

THE COURT: Ladies and gentlemen, we will recess until 9:15 tomorrow morning.

THE CLERK: Court in recess until 9:15 tomorrow morning.

(Whereupon, case continued to December 14, 1973 at 9:15 a. m.).

111 Centre Street, New York, N. Y.
Part 103
December 14, 1973.

(The trial was continued. The jury is not present.)

THE CLERK: The case before the court continues on trial. People of the State of New York against Jerry Gombarg, Martin Hodas, George Kaplan, 3653 of '73, P394 of '73.

The attorney, Mr. Kasner, is present. Mr. Kavanaugh is present. The jurors are not present in the courtroom. They are in the jury room.

THE COURT: Are there any applications of any sort before we bring the jurors in?

MR. KAVANAUGH: The only application I make I note that the Court, I had indicated I completed my direct examination. I simply want to ask the witness two or three questions on one limited area.

THE COURT: Have you any application you wish to make before we call the jury in, Mr. Kasner?

MR. KASNER: No, your Honor.

THE COURT: Call the jury in.

(The jury enters the courtroom.)

THE COURT: Mr. Kavanaugh.

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C H R I S T O P H E R H A T T O N, previously called as a witness in behalf of the People, resumed the witness stand, and testified further as follows:

THE CLERK: Mr. Hatton, you are still under oath.

Trial continued. Mr. Hatton resumes the stand. He has been previously sworn. All the jurors are present.

DIRECT EXAMINATION

BY MR. KAVANAUGH: (Cont'd)

Q Yesterday, towards the end of the day, I had asked you when was the first time you and I had discussed or talked about this case, and you indicated a few days before.

Do you recall going to the district attorney's office in April of this year and discussing the case?

A Yes, I believe it was with ADA Jacobs.

Q Who else was present at that time, do you recall?

A There were about ten people in the room. There was the DA Squad, I think there was about six detectives there, a couple of fire marshals.

Q Do you recall seeing me in that room?

A I met you there. I recall meeting you there.

Q So the first time that we met was not several days ago, but in April of '73; is that correct?

A Yes, sir.

Q Thank you very much.

MR. KAVANAUGH: I have no further questions, your Honor.

THE COURT: Mr. Kasner.

CROSS-EXAMINATION

BY MR. KASNER:

Q Mr. Hart, how many times have you told the story of the fire?

A Mr. Hatton.

Q Your name is Hatton?

A Yes.

Q Is it Hart?

A Hatton, H-a-t-t-o-n.

Q Are you also known by the name of Chris Hart?

A I was arrested under that name at one time, yes.

Q You mean the police made up a name

for you?

A No, I made up a name.

Q And you gave them that name; is that right?

A Yes, sir.

Q As long as we are on that subject, did you give them any other name?

A Yes.

Q What other names did you make up?

A Harton, H-a-r-t-o-n.

Q What other names did you make up?

A Harton, I am telling you the name, counsel.

Q That's the only name you made up?

A Bauman, B-a-u-m-a-n.

Q That's the only other name you made up?

A To the best of my knowledge, yes.

Q What name do you want me to call you?

MR. KAVANAUGH: Objection, your Honor.

THE COURT: Sustained.

Q Okay, Mr. Hatton, how many times have you told the story of the two fires?

MR. KAVANAUGH: Objection.

THE COURT: Overruled.

A Three times, counselor.

Q Would you tell me when and to whom you made each of these statements?

A I saw the fire marshals when they picked me up at 109 West 42d Street.

Q When was that?

A About a month and a half after the second fire.

Q Do you know the date of the second fire?

A I believe it was the end of July. Somewhere around the end of July, around the 25th, 26th, something like that.

Q So when was the date of that interview?

MR. KAVANAUGH: Objection, your Honor.

THE COURT: Overruled.

MR. KAVANAUGH: Your Honor, the witness has indicated he doesn't know the date. He said a month and a half to the best of his recollection after the second fire.

THE COURT: Do you know the approximate date?

THE WITNESS: Your Honor, I am under oath. I don't want to say a date if I don't know.

THE COURT: If you don't know, say so.

THE WITNESS: I don't know, your Honor.

and a half. I am just repeating his words, your Honor.

THE COURT: Is that your testimony, approximately a month and a half after August 23rd you spoke to the fire marshals?

MR. KASNER: After the fire, he said.

THE WITNESS: Your Honor, I am under oath.

THE COURT: I am asking you whether you said that.

THE WITNESS: I said that, yes, sir, your Honor, but I stated I am really not sure of the date, your Honor. I don't know.

MR. KAVANAUGH: I would indicate to the Court that the characterization of Mr. Kasner, I object to, "told your story." He made a statement. I think it is important, and I object to that.

THE COURT: Overruled.

BY MR. KASNER:

Q Now, when was the next time you again told the story of the fires to government officials?

A I was taken to the district attorney's office,

the assistant district attorney's office in Manhattan.

THE COURT: About when was this, do you remember? How long after you spoke to the fire marshal were you taken to the DA Office?

MR. KAVANAUGH: Your Honor, for the sake of clarity, I will stipulate that was April, 1973, if that's what counsel wants.

MR. KASNER: I don't know why he is stipulating as to April, 1973, and not stipulating as to August, 1972.

MR. KAVANAUGH: I will stipulate to both.

BY MR. KASNER:

Q Now, we have a conversation of August 23, 1972, and a conversation of April 26, 1973. Do you understand that, Mr. Hatton?

A Yes.

Q Did you again give a statement to the district attorney?

THE COURT: You mean after the original one on April, 1973?

MR. KASNER: After April 26, 1973.

Q Did you make another statement to the

district attorney?

A You mean another tape?

Q No. Did you speak to the DA about the fires?

A After the second conversation.

Q After April 26, 1973?

A Yes.

Q When was that?

A A few days ago.

Q A few days ago. And did you again tell him the story of the fire?

MR. KAVANAUGH: Objection.

THE COURT: Overruled.

MR. KAVANAUGH: "Told him the story"?

THE COURT: I have overruled your objection, Mr. Kavanaugh. Will you please not make it again.

MR. KAVANAUGH: I apologize, your Honor.

Q Well, did you again tell the story of the fires?

A Yes, I did.

Q And then yesterday you testified in court and again told the story of the fires; is that right?

A I answered questions.

protect your rights. You don't have to play lawyer on the stand.

A I am not playing lawyer.

MR. KAVANAUGH: Objection.

MR. KASNER: I ask your Honor to instruct the witness to answer the questions and not make his own objections to my questions.

THE COURT: Please, now. The question is, never mind the language, whether it's a story or your version or anything else. Did you ever describe the fires or tell your version of the fires to anybody else, other than the people that have just been mentioned, in other words, the DA twice, the fire marshal once, Mr. Botsky, and the defendants, as you say, to anybody else?

THE WITNESS: No, sir.

BY MR. KASNER:

Q Now, of the five versions of the fires that you have just discussed, the one with the fire marshal --

THE COURT: Mr. Kasner, he hasn't said his versions varied. I don't know why you

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whole conversation. I have to say that, Your Honor.

THE COURT: Well, just what you do recall.

A Y do recall that, yes, sir.

Q Before you were questioned on April 26th, 1973, by the District Attorney, do you recall Mr. Jacobs, an Assistant District Attorney, in New York County saying the following to you?

"Let me introduce myself. I am Assistant District Attorney Jacobs. Let me introduce everyone in the room. This is Lieutenant Ferguson, Patrolmen Gorman, Tom Russo from the fire marshal's office, Detective Gray, Sergeant Horman, and Assistant District Attorney Mike Kavanaugh, the time is 1:30 p.m., and you are in Room 649 of the District Attorney's office.

"The reason why we are calling you is to see what you know about certain arsons that were committed seven months ago. I want to state that very clearly so that under that nothing you say in this room will be used against you.

"You are here to provide us with information

Q Were you around the Harem on the night that Nicholas broke it up?

MR. KAVANAUGH: Objection.

THE COURT: Sustained.

Q Did you ever see Nick Valentine break up the Harem?

MR. KAVANAUGH: Objection, Your Honor.

THE COURT: Sustained.

Q Did you within the past month strangle a kitten with your hands?

A (No response.)

MR. KAVANAUGH: Objection.

THE COURT: Sustained.

Q Did you within the last month beat a sixty year old man named Robert F. Herman, breaking his ribs, blankening his eyes and putting knots on his head?

A Yes, sir, I did.

Q When this beating started, was this man sleeping in a bed?

MR. KAVANAUGH: Objection.

THE COURT: Sustained.

Q Did you beat a blackman named Napolian

about two months ago putting him in the hospital and almost blinding him?

MR. KAVANAUGH: Objection to the form of that question. That is clearly not proper.

THE COURT: Well, there are too many questions in it. Would you rephrase the question.

Q Did you beat a black man named Napolian ~~XXXX~~ and hospitalizing him?

MR. KAVANAUGH: At what baseball game did he beat him --

MR. KASNER: Mr. Kavanaugh, you are understanding sounds like the witnesses.

THE COURT: Please, did you attack this man?

THE WITNESS: I punched in the eye.

Q Did you beat a woman named Kim?

THE COURT: Mr. Kasner, I wish you would find some other word besides "beat."

Q Did you attack a woman named Kim, who is living here, for a prolonged period with a skull fracture?

MR. KAVANAUGH: Objection.

THE COURT: There are too many questions in it again; if you would rephrase the question.

Q Did you beat a woman named Kim?

MR. KAVANAUGH: Objection.

Q Did you strike a woman named Kim?

A I don't recall Kim, sir.

Q What was the name you knew her by?

THE COURT: Did you strike a woman with your fist?

THE WITNESS: I didn't strike a woman by the name of Kim with my fist.

THE COURT: Did you strike a woman named -- what is the name?

MR. KASNER: Kim. K-i-m.

THE COURT: -- in any fashion?

THE WITNESS: No, sir.

Q Do you know which woman I am referring to when I ask that question?

MR. KAVANAUGH: Objection.

THE COURT: Sustained.

Q Did you, approximately a year ago, strike a woman on the head who is living here?

MR. KAVANAUGH: Objection.

THE COURT: Overruled.

A Who? I didn't strike a woman.

THE COURT: Did you strike any woman on the head?

THE WITNESS: No, sir, not in the head.

Q Not in the head?

A I said I didn't strike a woman on the head. You asked me the question and I said no, counselor.

Q Did you strike a woman on any part of her body during the last year?

MR. KAVANAUGH: Objection.

THE COURT: Overruled.

A Yes, sir, I did. Yes.

Q Do you recall the name of the woman?

A Pat.

Q Is that the only woman you struck in the

testimony?

MR. KASNER: I mean, whether it's prospective or after he testified.

THE COURT: He hasn't given any testimony in this court until today.

Q When was the last time you discussed what you were going to say in this court with an Assistant District Attorney?

A I didn't discuss it.

Q You never discussed it?

A I talked about the fire bomb. I made it and I talked about money from Dexter.

Q When was this?

A Four or five days ago.

Q That was the last time you spoke to an Assistant District Attorney?

A I spoke to him this morning and yesterday, yes, sir.

Q What did you speak to him about?

A About the case.

Q Did you speak to him about what you were going to say?

A He asked me certain questions and I gave him

answers. I didn't run through it like I was in court or anything.

Q Did he make any suggestions about how you should answer a certain question?

A No, sir, he did not. He told me to tell the truth. That's what he asked me to do.

Q Oh, yes. O. K.

MR. KAVANAUGH: Your Honor--

THE COURT: I admonish you, most severely, those asides-- those comments are completely out of order, Mr. Kasner and the jury is instructed to disregard them.

MR. KASNER: Your Honor, I move to strike the last part of his answer. It was not responsive I didn't ask him what he said to him.

MR. KAVANAUGH: You asked me what I told him and he said what I told him.

MR. KASNER: I didn't ask that at all. The record will show I did not ask him what you told him. I asked him, did he do something.

THE COURT: Overruled.

Q When was the last time you spoke to Morton?

A I saw him in the Assistant District Attorney's Office yesterday afternoon or yesterday morning-- I'm sorry; excuse me.

Q How long did you speak to him?

A I said "Hello, how are you doing?" and then they put me in the Assistant District Attorney's Office.

Q When was the last time, before that time, you spoke to Morton?

A You mean, after? I saw him when they brought him up here and I said hello to him.

Q When was the last time, before yesterday, that you spoke to Morton?

A The last time before yesterday? That's when he got arrested. Before he was arrested, about a week before that.

Q When was the last time-- the last time you spoke to Valentine?

A I saw him yesterday in an Assistant District Attorney's Office.

Q Did you speak to him?

A I said "Hello, Mick." I said, "We can't talk to each other."

Q When was the last time before then you

THE WITNESS: I didn't intend to burn the place down. They asked me to make it. Mr. Hodas gave me a thing on how to make it. I said, "I don't know how to make it," and he said, "Here."

MR. KASNER: I move to strike that as non-responsive. The only question is: did he make a fire bomb for the purpose of being used to burn down the Palace. That's the question.

MR. KAVANAUGH: Your Honor, it's the first time Mr. Kasner has asked the question that way. He asked him, did he make the fire bomb. He said yes. Why? "Because they told me to," and then he said, "You made it because you wanted to burn the place down?" and that's your testimony?" The witness said, "That's not my testimony," and the record so reflects.

THE COURT: His testimony is clear enough now. Will you go on to another subject?

CROSS-EXAMINATION (continuing):

BY MR. KASNER:

Q Did any public official say that your cooperation would inure to your benefit in any way?

A No, sir, they did not.

Q At the time you were in Rikers Island Hospital, you were in prison, were you not?

A Yes, sir, I was.

Q What was the charge that you were in prison for?

A It was various charges.

Q O. K. How long was your sentence?

A It was eleven months.

Q How much had you served at that time?

A When I was in the hospital, I believe, about-- I have to guess now. Is it o. k. if I guess?

Q Say anything--

A (continuing) How much time I served when I was in the hospital or at the time I was in the hospital? I have to say, perhaps, when I first went in the hospital, about two and a half months.

Q How much time did you have to serve altogether?

A Eleven months.

Q When was your time due to expire?

A October 11th.

Q Were you out of jail before October 11th?

A Yes, sir, I was-- excuse me, counselor, that' with good time I would be outx October 11th.

THE COURT: When did you get out?

THE WITNESS: I'm not sure of the date, your Honor. They put me on a work release program. It's called the Granada House. It's on 118th Street and, I believe, either Lexington Avenue or Lenox Avenue.

Q A work release program?

A They call it Granada House but that's what it actually is. You live in the place and they take persons, if you have a good record in the prison or jail, or whatever you want to call it.

THE COURT: Next question.

Q Did you stay in the Granada House?

A Yes, sir. I stayed there about a week and a day.

Q Is that all you were required to stay there?

A No, sir. I had to stay there until the completion of my sentence or until I went up for parole again.

Q You didn't stay there until the completion of your sentence, did you?

A No, sir, I did not.

Q In other words, you violated the terms of your release; is that correct?

A Yes, sir, I did.

Q Have you been charged with any crime for violating the terms of your release?

MR. KAVANAUGH: Objection.

THE COURT: Sustained.

Q Did any District Attorney, at any time, tell you that your cooperation would be brought to the attention of the appropriate authorities?

A No, sir, they didn't.

Q When DA Kavanaugh asked you yesterday whether you had ever seen him before yesterday, what was your answer?

MR. KAVANAUGH: Objection-- I will withdraw it, your Honor. I'm sorry. Excuse me.

A When he asked me if I had seen him before that day, I was in court.

MR. KAVANAUGH: Excuse me. I will object. I don't think I ever asked him.

THE COURT: Objection is sustained. We are not here to characterize his testimony on

who made it?

A Oh, I don't really recall. I don't want to say it if I-- I don't want to try to remember if I can't remember.

THE COURT: You were speaking about this occasion in the bar. The last question you asked was whether he had told him at any time. Do you mean at the bar or do you mean at some subsequent occasion?

MR. KASNER: Any time.

A (continuing) You mean, after the fire?

THE COURT: Did you talk to him at any time after the fire about the fire?

THE WITNESS: Can I think for a minute, your Honor?

THE COURT: Yes; surely.

A I see with-- I can't recall.

THE COURT: That's the answer. You don't remember.

Q When did you find out who set the fire at the Palace?

A I found out the next day. Also, I heard the night before that-- well, we were-- the next day, I

found out about the fire; who set the fire? I knew who set the fire.

Q Mr. Hatton, were you ever convicted of a crime which involved swearing falsely under oath?

A Yes, sir, I was.

Q Were you ever convicted of a crime for forgery?

A Yes, sir, I was.

Q Were you ever convicted of a crime for possessing stolen property?

A Yes, sir, I was.

Q Were you ever convicted of a crime of fraud?

A Yes, sir. I don't know if I was convicted or not but I was-- yes, sir, I was convicted in that, yes, sir.

Q Did you and Dexter Morton go around the city impersonating police officers?

MR. KAVANAUGH: Objection.

THE COURT: Sustained in that form.

Q Have you and Dexter Morton ever impersonated police officers?

MR. KAVANAUGH: I'll withdraw my

objection.

A Yes, sir, I imagine you could say that. Yes, sir.

Q You imagine I can say that?

A They threw it out of court in Dexter's case.

Q Well, the complainant didn't show up; right?

MR. KAVANAUGH: Objection.

THE COURT: Sustained. The answer to the question was "yes, as I recall it." Now, that ends that inquiry.

MR. KASNER: Your Honor, if now we can adjourn, pursuant to our stipulation?

MR. KAVANAUGH: There are some matters that have been brought up. I think in fairness, I should be allowed to ask. It's not prejudicial to Mr. Kasner and he can resume cross-examination on Monday.

MR. KASNER: Your Honor, since I haven't finished cross-examination--

THE COURT: Just a minute. Come up to the bench.

(Whereupon, a side-bar conference was

opportunity you wanted for all kinds of cross-examination on Friday.

MR. KASNER: I didn't have those tapes on Friday.

MR. KAVANAUGH: You did, too, have the tapes on Friday.

MR. KASNER: I'm questioning from the tapes now.

THE COURT: You are not doing it very expeditiously. Will you, please, confine yourself to those?

(Whereupon, the side-bar conference was concluded).

CROSS-EXAMINATION (continuing):

BY MR. KASNER:

Q You made a fire bomb prior to the fire at the Palace, didn't you?

A Yes, sir.

Q You said you made it from a diagram given to you by Mr. Hodas; is that correct?

A Yes, sir.

Q When and where did he give you this diagram?

A About a week and three days; a week and four days before the fire.

Q Who was present at the time?

A I don't believe anyone was there except myself and Mr. Hodas.

Q Would you tell the jury what you put into this bomb and how you made it.

A It was-- I believe it was a quart wine bottle, sand, soap suds, ball bearings, alcohol, lighter fluid, T.C., the stuff you put down for the tile and then there was a cork and inside the cork there was a pin and a wick. It was about as long as a handkerchief rolled up and it was soaked, I believe, with lighter fluid. I'm not sure what the wick was soaked with.

Q Did you tell the District Attorney on April 19, 1973 that Mr. Hodas gave you a diagram to make a fire bomb?

A No, sir, I did not.

Q Did you tell the District Attorney on April 19, 1973 that you made a fire bomb?

A No, sir, I did not.

Q Is it not a fact that you told the District Attorney on April 19, 1973, "Dexter says I will

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inconsistent.

MR. KAVANAUGH: Absolutely not.

MR. KASNER: Then I will ask him a couple of ~~xx~~ questions that will be inconsistent.

THE COURT: ~~xxxx~~ Look, you know the purpose of this is not to build up a straw man on cross examination, and then knock it down. It is suppose to be pointing out inconsistent ~~xxxxxxxxxxxx~~ statements with his cross examination. This is not permissible.

(Whereupon, the following was then recorded within the hearing of the ~~jx~~ jury.)

Q Where were you when the French Studio was being burned?

A You mean the night of the fire, I was sleeping in the Geisha House.

Q Were you aware the place was about to be burned down?

MR. KAVANAUGH: Objection to that. Judge, that is so vague. I don't know what he means.

THE COURT: It is vague, will you be more specific, Mr. Kasner.

Q Immediately prior to the fire were you aware the person who was going to set that fire was going to set it?

A I had an idea I was't sure.

Q You weren't sure?

A No, sir.

Q Do you know where the person who set the fire got the gas from?

A Inside the Geisha House he knocked down the front door to get it.

Q Did you see him at that time take it?

A I saw him with the container, I saw he had newspapers.

Q What did he say?

A He was a little high, and he had been drinking quite a lot, and I said, you know, give me the gas back, and get the hell out of here.

Q Why didn't you take the gas back?

A I did I believe I did. Let me say this. I'm not sure I took the gas back, I know I saw him with the thing in his hand. I was yelling at him.

Q Would you have any problem taking anything away from Earl Jones?

A No, sir.

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Q Did Jerry and George fire Earl Jones after the fire, at the French Studio?

A Yes, I'm not quite sure they fired him, I think they did, yes, sir.

Q Why did they fire him?

A Because they were very angry because it didn't g off right down the street there.

Q Because he didn't set a good fire?

A Yes, they were ~~mpmk~~ upset about that.

Q Is it your testimony that you slept through both fires?

A Yes.

Q About a month and a half after the French fire you were questioned by a fire marshal, is that correct?

A Yes.

Q Did you tell the fire marshal all of the truth on that occasion?

A No, sir, I didn't.

Q In what respects did you lie to the fire marshal?

A I just -- I was, I know I was very ~~mgnvague~~ about one of the questions. He asked me, and I didn't want to get involved. I didn't tell him about me

making the fire bomb, and I didn't tell him about me ~~xxxxxxx~~ accepting money from Dextor after the first fire, and there might have been some other things, I can't recall.

Q Did you say you got paid or didn't get paid a hundred dollars from Dextor ~~Xxx~~ Mortin for making the fire bomb.

A I didn't receive any moeny for making the fire bomb; after the fire, Dextor gave me about twenty-five or thirty dollars, then we went out and made a bomb party, you know, drinking.

Q Then thereafter you had a conversation with the fire marshal again in ~~Xxxx~~ Riker's Island Hospital, is that right?

A Yes.

Q What were youdoing in Riker's Island?

A I was doing time.

Q For what?

A Attempted burglary and possession of burglar's tools; there was a whole buncy of charges, but they burned - knocked it down to an ~~xxxxxx~~ attempted burglary and possession of burglar's tools.

Q By the way, are you back in jail now?

A No, sir.

Q Is all your time served?

A No, sir.

Q Are you supposed to be out ~~in~~ of jail now?

A What do you mean?

Q Did you walk out of jail?

A No, I didn't walk out of jail.

Q Before your prison sentence, was offered, did you walk away from jail?

A I walked away from the ~~g~~Granada House on 18th Street and Lexington Avenue.

Q Was this the terms of your agreement to breach the sentence to the ~~G~~Granada House?

A Yes, sir.

Q And, you haven't been put back in Jail since, ~~hhhd~~ have you?

A No, sir.

Q How much of your sentence is still unexpired from the date since you walked out of the ~~G~~ Granada House?

A About three months, something like that. I know my release date is supposed to be October 11.

Q Now, in the conversation you had with

if I may ask, do you intend to ask Mr. Detsky?

MR. KAVANAUGH: Number One, Mr. Detsky represented both the defendants Mr. Morton and Mr. Jones, the defendants in the other action, and he was paid then by two of these defendants, Mr. Gomberg and Mr. Kaplan.

MR. KASNER: How is that?

MR. KAVANAUGH: And, I can prove that. Number Two, it becomes relevant because Mr. Detsky listened to a tape recording in our office of a statement made by Mr. Morton and Mr. Jones and in that statement they implicated two of the three defendants, Mr. Kaplan and Mr. Gomberg, and Mr. Detsky informed them and was finally paid from that point by two of the defendants, Mr. Kaplan and Mr. Gomberg which I can also prove.

MR. KASNER: If Your Honor please, he can't prove any of that but how is that relevant.

MR. KAVANAUGH: First of all, I can prove that. Mr. Detsky is not going to commit perjury and I have a prior statement made by him in open court.

MR. KAVANAUGH: I indicated to the Court what I intend to call Mr. Detsky about.

MR. KASNER: Mr. Detsky is counsel in this case, and is Mr. Kavanaugh saying Mr. Detsky can't --

THE COURT: Please.

MR. KASNER: Advise his client --

MR. KAVANAUGH: I'm not saying that, all I'm saying is Mr. Kasner and the three defendants should not talk to him about what I have disclosed to the Court ~~kkk~~ that will be the area of inquiry should the court allow me to call him as a witness and should the court allow me to ask those questions.

~~THE KXXXXXXXXX~~ Mr. Kasner has interrupted several times, and he feels these questions are not relevant. In that case there should be no problem ~~xx~~of Mr. Kasner ~~xxxxxxxxxx~~ obaying the Court's order.

THE COURT: I can't see how I can do that.

MR. KASNER: I would suggest Mr. ~~Kxxxxx~~ Kavanaugh not devulge testimony heard in this room to prospective witnesses in this case. That Chris Hatton kept away from prospective

xxxxxx witnesses in this case so the testimony cannot be squeeze together as well it might be in this case, and I respectfully submit that nothing Mr. Kavanaugh said so far has anything to do with the issues in this case and certainly nothing to do with the xxxhm testimony of Chris Hatton.

THE COURT: The case is recessed now until 2:15.

(Whereupon, the case was then adjourned until 2:15 p.m.)

April, 1973, were you advised by the district attorney:

"You are not a target of any investigation"?

A I believe I was. I am not sure.

Q By the way, at the time of this interview in April, 1973, you were serving a jail sentence, weren't you?

A Yes.

Q Before you were questioned on that date, did the dictrict attorney tell you:

"If you even admit to certain crimes here, nothing you will say will be used against you. Let's say that you say eight months ago you set an arson, I can't use that against you."

Do you recall that being said to you?

A I believe it was, yes.

Q Did the district attorney also promise you on that occasion:

"Any cooperation that you give us here will be brought to the proper authorities. I know that you are incarcerated now"?

A I believe that was said, yes, sir.

Q Now, Mr. Hatton, on Friday you said you weren't Mr. Valentine's bodyguard; is that correct?

Q Now, was that true, that you had denied it to the district attorney?

A No, that was not true.

Q So what you told Mr. Detsky was false; is that correct?

A Yes.

Q Did the people questioning you on April, 1973, offer you any deal if you cooperated with them?

A No, sir.

Q Did you tell Mr. Detsky in your interview with him, "They can fix it so I can be charged with the same thing Dexter and Jones are charged with"? That the district attorney told you that they can fix it so that "I can be charged with the same thing Dexter and Jones are charged with"?

A I don't recall that, no, sir.

Q Do you recall saying that to Mr. Detsky into the tape?

A No, sir, I don't recall it.

Q Did you tell Mr. Detsky that on April, 1973, an attempt was made by your interrogators to scare you by threatening to imprison you?

A Was that in the fire marshal's office?

offered. He has not testified that that in fact is the question. I think counsel is assuming that.

Q That's the question: Did you tell Mr. Detsky?

THE COURT: Objection sustained.

Q Now, you testified on Friday that no district attorney told you that your cooperation would be brought to the attention of the proper authorities; is that correct?

MR. KAVANAUGH: Objection. I would like counsel to point that out in the portion of the testimony. We have the record I would like to have it specifically read as to what section he is referring to.

THE COURT: I don't recall.

MR. KASNER: Your Honor, all it calls for is an answer whether he said this on Friday or didn't say it on Friday.

THE COURT: We have the record. Why do we have to rely on his recollection?

Q Page ~~23~~ 244, the middle of the page:

"Did any district attorney at any time tell you that your cooperation would be brought to the

attention of the appropriate authorities?

"Answer: No, sir, they didn't. I don't know what I have just accomplished, but if I have accomplished something, I would appreciate it."

THE COURT: That is the testimony.

Q Did you say that on Friday?

A Would you repeat the question, please.

MR. KAVANAUGH: The record speaks for itself, your Honor.

THE COURT: It is not necessary, Mr. Kasner. It is in the record there. If you have any other questions to ask him about what he said about that subject at a prior time, then go ahead.

Q Did you say today that this statement was made to you before you gave your testimony on April of 1973?

MR. KAVANAUGH: Objection.

THE COURT: Sustained.

Q Have you been told by the district attorney or the police that you would be going back to jail after you finish your testimony here?

A Nobody told me anything.

Q Were you in jail last night?

A No, sir.

had not indicated to the fire marshals on that date that any of the defendants were involved in ~~them~~ these fires. Do you recall that, sir?

A Yes.

Q Now, I would ask you if at that meeting that you had with the fire marshals if you recall being asked these questions and giving these answers -- again these are questions and answers that are asked of you by the fire marshals in August of 1972:

"Fire Marshal Russo: Yes, exactly what happened?

"Chris: They --

"Russo: When you say 'they,' I want names.

"Chris: George and Jerry.

"Russo: Give me the last names first.

"Chris: George Kaplan and Jerry Comberg. They wanted me and Dexter to go down and set it on fire. They were going to give us one hundred dollars apiece, so I told them why don't you break it ~~it~~ up."

Do you recall the fire marshals asking you those questions and you giving those answers, in August of 1972?

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A It is not the exact words like that, but I recall pretty much what it was, yes. I can't recall the exact words though.

Q To the best of your recollection, Mr. Hatton, what did you tell this jury concerning this case that you did not tell the fire marshals in the interview that you had with them in August of 1972?

A You mean when they picked me up?

Q Yes, when they picked you up.

A About Mr. Hodas being involved in it first and about me making the fire bomb.

Q Do you recall being asked this question at that time and giving --

THE COURT: By that time, you mean before the fire marshal?

MR. KAVANAUGH: Yes, sir, I am sorry.

Q Do you recall when you were speaking to the fire marshals when you were picked up, do you recall being asked this question and giving this answer:

"Russo: After the fire, did Jerry Kaplan or -- what is it, George Comberg, right, or George Kaplan, did they mention the fires after the fire?

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Do you recall being asked those questions and giving those answers?

A Yes.

Q Do you recall the exact wording?

A Not the exact wording because I'm sure that's the gist of what I said.

Q Now, it was brought out on cross-examination-- I believe it was asked if you hdd ever been convicted of the crime of falsely swearing to an oath. Do you recall that question?

A Yes, sir, I do.

Q Were you so convicted?

A I beg your pardon?

Q Were you convicted of such a crime?

A I was convicted of false application on a passport.

Q And, that's false swearing to an oath.

A I'm not sure of the context of the law. I know I put down a phoney name, phoney address and showed a phoney driver's license-- excuse me. Do you want me to go on?

Q Yes.

A I didn't want to go to jail. I didn't want to be arrested.

Q Well, if that is the case, why did you tell them about the involvement of the defendants, Kaplan and Gomberg?

A This is the first time?

Q Yes, sir.

A At that time, I didn't know how much they knew, so I had to--

Q Go ahead.

A (continuing) I had to say that because I didn't know how much they have beentold or how much they knew.

Q KNew about what actually happened?

A What actually happened, yes.

Q Now, Mr. Hatton, at the meeting in Mr. Jacobs' office, did Mr. Jacobs or did anyone at that meeting tell you that you would receive-- withdrawn.

Were you ever promised anything by me concerning your cooperation in testifying before the three defendants in this case?

A No.

Q Now, did Mr. Jacobs, when you were in Mr. Jacobs' office, aside from telling you that nothing that you said in that office would be used against you--did he ever tell you that you would not be arrested for your participation in these arsons?

A (no response).

Q If you can recall, sir.

A Will you, please, repeat that question; if I ever been arrested--

Q Let me ask you this--

MR. KESSNER: Why don't you repeat the question?

MR. KAVANAUGH: I have no objection.

THE COURT: Will you read the question, please.

(The Reporter read the record).

A I can't say that for sure.

THE COURT: You don't remember?

THE WITNESS: I don't remember.

Q Had anyone ever told you, Mr. Hatton, either Mr. Jacobs or myself or anyone from the fire marshal's office investigating these fires or any

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police officer, that by testifying here today and by your cooperation in this case, that you would not be arrested for the crime of arson? Has anyone ever made that promise to you?

A No, no.

Q Now, do you recall the meeting that you had in Mr. Detsky's office last October? Do you recall that meeting?

A Yes.

Q You gave a recorded statement. How did you get to that meeting, Mr. Hatton?

A Mr. Kaplan drove me there and Mr. Gomberg was with him.

Q Let me ask you this: while you were being asked these questions that Mr. Kasner has alluded to, was anyone else present in the room?

A Well, Mr. Detsky was there, Mr. Kaplan and Mr. Gomberg and myself.

Q Mr. Kaplan and Mr. Gomberg were in that room the entire time Mr. Detsky questioned you?

A Yes.

Q Did Mr. Detsky, in that meeting, ever

THE COURT: This is the third statement. There were two others.

Q Mr. Hatton, are you saying you signed three statements?

A No. I filled out three and this one here is the last one I filled out.

Q You wrote them out all by hand yourself?

A Yes.

Q They all said the same thing or they said different things?

A I was given suggestions how to state it here, put it. I wrote one out and they said, "You better do better than that," so I did another one and this is the one I ended up with.

Q You didn't tell that to the District Attorney a moment ago, did you?

MR. KAVANAUGH: Objection.

THE COURT: Sustained.

Strike it from the record and disregard the comment.

Q Mr. Hatton, who wrote this?

A I did.

16-1 Colloquy

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COURT CLERK: The case on trial is continued after short recess. The defendants are present, and their attorney is present. The jury is not present in the courtroom. They are in the jury room.

THE COURT: Mr. Kasner, you wish to make a statement?

MR. KASNER: During the recess I passed a room on this floor in which there were four people that I could see through the door, District Attorney E Kavanaugh, Dexter Morton, Chris Hatton, and another gentleman, I didn't really catch who that was. As I walked passed the door, I heard the District Attorney Kavanaugh discussing testimony of Christopher Hatton so far as he had the words "He lied to the fire marshals." As I had lunch I feared that the testimony of the defendants would be brought into some sought of collision through such tactics and I respectfully request a mistrial on the grounds that the exclusion of witnesses have been completely violated by this conversation which I can assume has happened on

more than one occasion.

THE COURT: Mr. Kavanaugh.

MR. KAVANAUGH: Yes, Judge, all I said and certainly Marshal Demarco was present, Mr. Morton was present. Mr. Hatton was present, and Mr. Hatton asked me in my opinion how he had done, and I said well, this is up to the jury to decide.

He said, "Why?" He said I am testifying and I said look, Ex Chris, you testified that you lied to the fire marshals, you testified that in some portions of your story you had lied to the District Attorney. How a jury will take that, I have no idea. So, I am not going to turn around, excuse the expression, the word I used, I'm not going to turn around and bull shit you about your testimony; that was the sum and substance of the discussions I had in the presence of Mr. Morton.

I would further state for the record Mr. Morton will so testify, that I have on many occasions told both Mr. Morton -- I have told Mr. Morton, Mr. Jones and Mr. Hatton not to discuss this case with any one. When they

xxxxxx stepped off that witness stand, they are not to discuss their testimony, and Mr. Hatton, I believe the court may recall, until Mr. Kasner xxxxx somewhat stopped him, testified on direct examination to the affect I would not l him discuss this matter with Mr. Morton or Mr. Jones while he was testifying here. That is the sum and substance of what occurred down in that witness room, and I will say to the Court that all along I have been telling Mr. Hatton, attempting to reassure him that x in my heart I felt he was trying to do the best thing possible in trying to tell the truth. I on many occasions said that in front of Mr. Morton and Mr. Jones. If there is a crime in that, if I have violated any oath as an officer of the Court, I apologize, but I don't clearly see that as the case.

MR. KASNER: The best way to make sure the ~~witnesses xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~ witnesses don't x speak to each other is to keep them ~~xxxxxx~~ segregated and not ~~kxxx~~ kept in the x ~~samexxxx~~ room. There is no

justification whatever to have Mr. Hatton in the same room with Mr. Hatton after the completion of Mr. Hatton's testimony and ~~x~~ immediately prior to the commencement of Mr. Morton's testimony.

THE COURT: I would ~~xx~~ add something to that. I would like you to keep them segregated, if possible.

MR. KAVANAUGH: The problem I have, Judge, I would be more than happy to do that, but we have a bit of a problem. Mr. Hatton is somewhat concerned for his safety as these officers will indicate -- if any of these guys have something to say they can take the stand. I don't need this garbage or this crap.

THE COURT: I don't think we should discuss ~~x~~ it any more. I am a little disturbed by the subject, but the motion for a mistrial is denied.

MR. KAVANAUGH: Judge, really --

THE COURT: You want me to reconsider the motion or my decision?

MR. ~~KAVANAUGH~~ KASNER: Exception, Your Honor.

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MR. KAVANAUGH: I don't feel that I have done anything ~~wrong~~ wrong that having these witnesses to go specially with that ~~admonition~~ admonition, not only the person guarding Mr. Morton, but the persons guarding Mr. Hatton. I don't think I have done anything ~~improper~~ improper and I have a man power problem. I don't like the Court even saying they are disturbed about the situation because I am attempting to be as fair as possible.

THE COURT: I understand. At any rate, the motion for a mistrial is denied. Will you call the next witness, please.

MR. KASNER: It has been infrequently said it ~~appears~~ every justice is just as important as the dispensing of justice. ~~The appearance~~ The appearance of propriety is just as important as the dispensing of propriety.

THE COURT: What I am interested in if there was any impropriety.

MR. KASNER: The fact they are in the same room is an impropriety.

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THE COURT: Let's go off the record gentlemen.

(Whereupon, there was a discussion had off the record outside the hearing of the jury.)

THE COURT: You may begin with your direct examination, Mr. Kavanaugh.

DIRECT EXAMINATION

BY MR. KAVANAUGH:

Q Mr. Morton, you are residing in the Tombs because you are under arrest, is that correct?

A Yes.

Q When were you arrested?

A August 16, 1972.

Q Now, prior to August 16, 1972, ~~x~~ were you a resident of the ~~Xxxx~~ City of New York?

A Yes.

Q ~~Xxxx~~ Where were you employed?

A The Gaisha House, 414 West 42nd Street.

~~Q~~ Q Who were your employers, if you know?

A George Kaplan and Jerry Gomberg.

Q Now, in May, ~~xxxxx~~ specifically May 10, 1972, did you have occasion to go inside the Palace Massage Parlor located at 410 West 42nd Street?

A Yes.

Q For what reason?

A To set a fire.

Q How did you get inside the Palace?

A I broke the window out, and I went inside.

Q Did you set a fire?

A Yes.

Q Would you describe to the jury how you did that?

A Well, I broke the window out, and ~~&~~ I took the bar off the window ~~xxxx~~ shield inside the Geisha House where the gaskets were made up, and the wine bottles and I went outside and I broke the window out, and I went through the window, and I poured the gas over the carpet and the sofa and I set ~~xxx~~ it afire and went back out and called the fire department.

Q You broke the window to where, the Palace?

A The palace, yes.

Q Now, when you set that fire -- withdrawn.

Mr. Morton, what type of ~~building~~ building was the Palace Massage Parlor located in?

A It was an apartment.

Q Apartment building.

A Yes.

Q Where was the Palace located in that building?

A Ground floor.

Q And, what was located ~~above~~ above the Palace Massage Parlor, to your knowledge?

A An apartment house.

Q Do you know if People were residing in those apartment houses?

A Yes.

Q Do you know if they were residing in these apartments on May 10, 1972?

A Yes.

Q About what time, Mr. Morton, did you enter the Palace Massage Parlor and set this fire?

A About 5:30.

Q In the morning?

A Yes.

Q Prior to setting this fire in the Palace Massage Parlor, did you have any conversations with George & Kaplan concerning the fire?

A Yes.

Q What did you say to him, and what did he say to you concerning this fire, that you recall?

A Well, he said the place --

MR.KASNER: I object unless I get time and places.

THE COURT: He said prior to it. About how long prior to the fire did you speak to Mr. Kaplan?

THE WITNESS: The next day. The day after -- before.

THE COURT: The day before?

THE WITNESS: The day before I started it.

THE COURT: In other words, May 9th?

THE WITNESS: Yes.

THE COURT: Or was it -- May 9th?

THE WITNESS: Yes.

Q Where did this conversation take place?

A The Geisha House.

Q What, if anything, did Mr. Kaplan say to you concerning the fire at the Palace Massage Parlor?

A He said that the guys hurt the business, and they got to get off the block.

Q Did he say anything else?

A He said that he wanted the fire done tonight.

Q Now, prior to that day, prior to the day before the fire had taken place, you had any conversations with the defendant George Kaplan concerning a fire inside the Palace Massage Parlor?

A The same day?

Q No, prior to that day had you had any conversations or had you talked to him about the possibility of setting a fire inside?

A Yes.

Q Did you have any conversations with the defendant & Jerry Blomberg concerning setting a fire in the Palace Massage Parlor prior to your setting it?

A Yes.

Q When did that conversation take place?

A The ~~x~~ same time as the conversation took place when I talked to George Kaplan.

Q What, if anything, did Mr. Gomberg say to you, that you recall?

A That you will get three hundred. Well, they will pay me three hundred to do the place.

Q Did he make reference to anaything ~~hx~~ ~~xxxxxxx~~ about what you would get if you set the fire?

A He said it would be money for you to go home in Atlanta for Mother's Day.

Q ~~x~~Was any provision made for you to go home to Atlantia?

A Yes, if I set the fire, I would have got the money.

Q Any indication at all about a plane ticket after the fire?

A He got the plaine ticket after the fire.

Q This is Mr. Gomberg?

A Right.

Q Did Mr. Gomberg say anything to you

prior to setting the fire about that plane ticket?

A He didn't say anything about the plane ticket. He said he would give me the three hundred dollars.

Q Did he ever indicate to you prior to setting the fire he would buy a round trip ticket for you to xAtlanta?

A Yes.

Q Prior to setting the fire?

A Right.

Q Now, prior to setting the fire -- withdrawn.

Did you know the defendant ~~Morton~~ Martin Hodas?

A Yes.

Q Who is Mr. Hodas -- withdrawn.

Did you know if Mr. Hodas has any interest in the Geisha House, to your own knowledge, if you know?

A To my own ~~knowledge~~ knowledge, I believe so, yes.

Q But, you are not sure?

A I am not sure, no.

Q Did you have any conversation with

Q Prior to going into the French Model Studio did you have ~~a conversation with~~ a conversation with anyone?

A Yes.

Q Who?

A George Kaplan and Jerry Gomberg.

Q Did anyone go with you when you set the fire at 436 West 42nd Street?

A Yes.

Q Who?

A Earl Jones.

Q What time did you enter 436 West 42nd Street on July 25th, 1972?

A About 5:00 o'clock in the morning.

Q Prior to entering had you had a discussion with Earl Jones concerning the fire at 436 West 42nd Street?

A Yes.

Q After you had this discussion and when you went in -- withdrawn.

How did you get into the French Model Studio?

A At first Earl Jones went down ~~there~~ there by himself to set the fire.

Q When you went there?

A Yes, I kicked the door in.

MR. KASNER: Your Honor, I object to the question and move the answer be stricken on the grounds there is no indication he was with Earl Jones at the time and he is probably speaking about hearsay.

THE COURT: Which entry are we talking about?

MR. KASNER: Earl Jones went down by himself. If Earl Jones went down by himself, I don't know how this witness could be telling what he saw.

THE COURT: We are talking about an occasion before 5:00 o'clock a.m.

MR. KAVANAUGH: I think it would become clear to the court this reference to Earl Jones, I would join counsel in the application to strike that answer as it contains hearsay.

THE COURT: All right, strike it.

Q When you reached 4336 West 42nd Street, the French Model Studio on July 25th, 1972,

Mr. Morton, with Mr. Jones, did xx you go inside that Massage Parlor?

A Yes.

Q How did you physically get inside that massage parlor?

A Kicked the door open.

Q After you xx kicked the door open what did x you do?

A I walked back in the back and I poured the gas over the carpetx.

xTHE COURT: You did what?

THE WITNESS: I xxxxx poured the gas over the carpet and over the walls and I lit it and I went out the back door.

Q Where did you get this gas from?

A Earl Jones.

Q Now, prior to setting this fire -- withdrawn.

Would you describe to us the building 4376 West 42nd Street, describe the building at that location?

A It is an apartment building.

Q Where is the French Model Studio ~~xxxxxxxx~~ located?

Q Do you want to stay in jail, Dexter?

A No, I don't think no one wants to stay in jail.

Q Well, how do you expect to get out of jail, Dexter?

MR. KAVANAUGH: Objection.

THE COURT: Sustained.

Q Do you feel giving testimony here today will help you get out of jail?

A Not as I know of, but I hope something might happen, I'm helping myself.

Q Has -- to your knowledge, have you or your lawyer discussed taking a plea?

A No.

Q Has anybody indicated to you on the part of the governmental authorities that the cooperation you give in this trial can determine how long you stay in jail?

No.

Q Did you figure that out by yourself?

MR. KAVANAUGH: Objection.

THE COURT: Sustained.

Q Is that what you feel?

A No.

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A Yes.

Q What did he say?

A He said I would like to shake the man's hand who took care of n Nick's place.

THE COURT: Who is what?

THE WITNESS: Who set the fire to Nick's Place.

THE COURT: M By Nick, you mean?

THE WITNESS: Nick Valentine.

THE COURT: He was referring -- I see.

Q Mr. Morton, have you ever been convicted of a crime?

A Yes.

Q What types of crimes have you been convicted of, sir?

A Burglary, and petty larceny, receiving stolen goods.

Q A Have you ever been convicted of the crime of criminal treaspass?

A Yes.

Q You were arrested when, on what date, do you recall?

A For the crimes?

leading the witness.

THE COURT: Sustained.

Q Do you recall -- where did you see Mr. Hatton for the first time since you ~~xxxxx~~ saw him on August 16, 1972? Where did you see him?

A In your office.

Q And, do you recall me saying anything to you and Mr. Hatton about discussing this case?

A No.

Q Nothing at all?

A No. You said that we shouldn't discuss the case or anything together.

Q That is what I meant. Since that time have you and Mr. Hatton at any time discussed this case, or discussed your testimony in this case?

A No, we haven't.

Q Did we discuss this at all on Friday afternoon, this past Friday?

A Yes, you and I did.

Q Was Mr. Hatton present at the time we discussed it?

A Yes, but he was not inside the room with us. He was outside.

MR. KAVANAUGH: Thank you very much.

I have one further question.

Q On August 16, 1972, when you were arrested were you represented by an attorney?

A Yes.

Q Who was that attorney?

A Kasner and Detksy.

Q Did you pay?

A No.

Q For their services?

A No.

Q Did the Court assign them to you as your attorney?

A No.

Q Whop paid them?

A George Kaplan and Jerry Gomberg.

MR. KAVANAUGH: I have no further questions.

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from the other side. Just stop.

Q Well, did you observe there were less people going into the Geisha House than before the Palace was open?

A It was more.

Q More people going into the Geisha House?

A Before the Palace was open.

Q More people going into the Geisha House before the Palace was opened?

A Yes.

Q Did you ever discuss the fact there was more business done before the Palace was open than after the Palace was open?

MR. KAVANAUGH: Objection; with whom?

THE COURT: Yes, sustained.

Q Did you ever talk with anybody in the Geisha House about the fact that there was more business in the Geisha House before the Palace was open?

A No.

Q Did anyone ever talk to you about it?

A Yes.

Q Who talked to you about it?

A George Kaplan.

Q When did he talk to you about it for the first time?

A As soon as the Palace open up, he talked about the business not coming in like it used to be, got to get the guys off the street.

Q Did Mr. Kaplan tell you business was bad and he couldn't afford keeping you and the other people if it continued that way?

A No.

Q Did Mr. Kaplan ever tell you he had to lay off anybody as a result of business?

A No.

Q Did you ever discuss this with him?

A No.

Q You never discussed layoffs in any way?

A No.

Q Were you paid a straight salary or a commission?

A I was paid a straight salary.

Q How much was your salary per week?

A Thirty dollars a day.

Q Did you work seven days a week?

A Yes.

Q So that would it be fair to say your salary was $210 a week?

A Yes.

Q Was this the same salary that was being

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THE COURT: Tar paper.

MR. KAVANAUGH: I'm sorry.

Q Now, will you describe exactly what happened to the best of your knowledge on the night of the fire on 436?

A Well, I closed the place up and I left and Chris left that night. He said he would be back by George Kaplan and Jerry Gomberg kept rushing us about doing it.

THE COURT: You say "Left," left where, Mr. Morton?

THE WITNESS: I went to the bar, to the bar and I saw Earl Jones there. And Earl Jones told me that George Kaplan told him to take care of the place then. And I told Earl not to get involved. And Earl said he's going to do it. And I told him, "If you do it, call me at the Harem Hotel and I'll come down and make sure you call the fire department."

So when I was at home, he did it and I heard the sirens and he called me.

BY MR. KASNER:

Q He did it and what?

A He lit the place and I heard the sirens and he called me and told me he did it. So I called George

Kaplan at home and told him and he said, "Okay, and I'll talk to you tomorrow."

So I left and went down where Earl was, went down by the place, and the place was just burnt by the front. And I said, "Earl, we got to do it again."

And Earl said, "I got some gasoline beside the building, I'll go beside the building."

I went by the place, kicked down the door in, I told Earl to watch out over me. And I go in and knocked the door in and put the gasoline on the carpet and on the sofa.

Q Where did you get the gasoline from?

A Earl Jones.

Q Where did Earl Jones get the gasoline from?

A I don't know.

Q Did you ever hear anybody ~~xxxxxxx~~ offer Earl Jones to burn the place?

A No.

Q Did Earl Jones tell you somebody had offered him to burn the place?

A Yes.

Q Was Earl Jones sober when he told you he's burning the place?

MR. KAVANXAUGH: Objection.

THE COURT: Sustained. It calls for a conclusion, for one thing.

MR. KASNER: Your Honor, I submit that Earl Jones, that he is an expert, Dexter Morton is an expert on sobriety. Therefore, I can probably qualify him as an expert in being able to tell when a person is drunk and when a person is sober.

THE COURT: The objection is still sustained.

Q Had Earl Jones been drinking prior to the time he said he was going to set the fire?

A Yes, he had been drinking.

Q Had he been taking any pills?

A No; Earl Jones drinks, he don't take any pills.

Q Is he a wino?

MR. KAVANAUGH: Objection.

THE COURT: Sustained.

Q Is he what you would call a wino?

MR. KAVANAUGH: Objection.

THE COURT: Sustained.

Q What did he normally drink?

A Anything made by whisky.

Q Anything that is made by whisky?

A Whisky, wine, beer.

THE COURT: Any type of alcohol?

THE WITNESS: Yes.

BY MR. KASNER:

Q Did Earl Jones drink heavily?

A Sometimes, sometimes he did and sometimes he did because when he had to work, he didn't drink heavily.

Q That night, did he drink heavily?

A Not to my recollection.

Q That night, had you drunk heavily?

A No, I wasn't even drunk.

Q When you made the fire at 436, you weren't even drunk?

A No.

Q Mr. Morton, was there ever any night you weren't drunk?

MR. KAVANAUGH: Objection.

THE COURT: Sustained.

MR. KASNER: Why is that objectionable?

MR. KAVANAUGH: If Mr. Kasner has to be —

THE COURT: Sustained. I'm not interested

in fact happened on other nights. We're interested in what happened on the night in question.

MR. KASNER: I submit if he's drunk on every night, he has to be drunk on that night.

THE COURT: The objection is sustained.

BY MR. KASNER:

Q So there is no way that on August 16, 1972, you could have told the fire marshals that you were bombed out of your mind at the time --

MR. KAVANAUGH: Objection.

THE COURT: Objection sustained. It's stricken from the record. The jury will disregard it.

Q What time did you go home from the bar that night?

A 436?

Q Yes.

A Oh, about 3:30.

Q What time did he call you at the hotel?

THE COURT: Who?

MR. KASNER: He testified that Earl Jones called him at the hotel.

THE COURT: That is what I want to know.

A He called me about 4:30, 5 o'clock.

THE COURT: A.M. or P.M.?

THE WITNESS: A.M.

BY MR. KASNER:

Q What time did you get down there to set the second fire?

A About 6 o'clock. It was dawn almost when I was there to set the fire.

Q To the best of your knowledge when was the first time that Chris Hart found out that the fire at 410 had been set?

A Next day.

Q The next morning?

A The same monning, yes, later on that morning.

Q Now, did you call Mr. Kaplan or did Chris Hart call Mr. Kaplan?

A I called Mr. Kaplan.

Q Was Chris Hart with you?

A No.

Q Do you know whether or not Chrisk Hart called Mr Kaplan?

A No.

THE COURT: Excuse me, maybe I'm lost

was burned did you know of the existance of any gasoline in the Geisha House?

A Yes. Chris Hart and Jerry went down and bought some and brought it back.

Q How do you ~~xxx~~ know that?

A ~~Xxxx~~ Because they left in the car ~~xx~~ to go down to the service station that night.

Q Did you see them get the gas?

A I saw them bring it back.

Q You saw who bring it back?

A Jerry Gomberg and Chris Hart.

Q Who was carrying the gas?

A Who was carrying the gas? Chris was carrying the gas out of the car. He ~~xx~~ picked up the gas and brought it out of the car. The same gas the fire marshal picked up out of the place.

~~X~~Q What was the container it was in?

A Light container pick up with a handle.

Q That gas was never used, was it?

A Yes.

Q It was used?

A Yes.

Q How big was the container?

A I don't know.

As I understand the witness, he said he was questioned once by the fire ~~marshal~~ marshal and once by the District Attorney.

MR. KASNER: That is what he said.

MR. KAVANAUGH: No, he said once he was questioned at the fire marshals office at their ~~office~~ office and once when he was brought over to the District Attorney's office. That is what he indicated clearly.

Q How many times have you been questioned by the District Attorney?

A Three or four times.

Q When?

A I can't recall. It's been so long.

Q You can't recall?

A No.

Q When is the last time you were questioned by the District Attorney?

A Last week.

Q Where was this?

A At Mr. Kavanaugh's office.

Q Did they prepare your testimony for court today?

MR. KAVANAUGH: Objection.

THE COURT: Sustained. The question is stricken from the record and the jury is instructed to disregard it.

Q Did they ask you to tell them about the story of the fire last week?

A No, he already knew.

Q Did he show you your Grand Jury testimony last week?

A No.

Q Did he show you any statement you had made last week?

A No.

Q Did he show you any statement any of the witness had made last week?

A No.

Q So what was the purpose of your being there last week?

MR. KAVANAUGH: Objection.

THE COURT: Objection sustained.

Q What did you do there last week with the District Attorney?

A He was telling me I would be going to trial soon.

Q That's all that was said?

MR. KAVANHUGH: Objection.

I don't think the witness finished.

THE COURT: Overruled.

MR. KASNER: If the witness is finished, he can finish.

MR. KAVANAUGH: That's hard to do with you, Mr. Kasner.

Q That's all; is that correct?

A Yes.

Q How long did the interview take?

A About thirty minutes. He said you would be

going to trial soon and just tell the truth.

Q That took thirty minutes?

A About thirty minutes, yes.

Q O. K. Now, the time before this thirty-minute interview, when was that?

MR. KAVANAUGH: Objection.

THE COURT: Overruled.

A The time before?

Q Yes, the time before this thirty-minute interview.

THE COURT: You're talking about the previous?

Q The time before you met the Assistant District Attorney before this last thirty-minute interview a week ago.

A I can't recall.

Q Was it a month ago?

A I can't recall.

Q Was it six months ago?

MR. KAVANAUGH: Objection, your Honor.

A I don't know.

THE COURT: The witness has answered the

question, Mr. Kasner.

Q Can you recall who was there?

A Sure. Mr. Kavanaugh and Mr. Russo.

Q Those were the two people that were there?

A Yes.

Q That's all?

A That's all.

Q Did this take place April 1973?

A Yes.

Q So, why did you say you can't recall?

A You just brought it up. I remember.

THE COURT: Please, Mr. Kasner.

Q Now, in April of 1973, you were interviewed by two people; is that correct?

A Yes.

Q Mr. Kavanaugh and Mr. Russo?

A Yes.

THE COURT: Mr. Russo is the fire marshal?

THE WITNESS: Yes.

Q There were three of you in a room; is that correct?

A Yes.

Q And nobody else?

A No.

Q That means there was nobody else?

A Nobody else in there, no.

Q Did they ask you to tell them the story of the fire at that time?

A Yes.

Q And, you told them what you said today; is that correct?

A I told them, as I'm telling you today, yes.

Q Now, at any time, were you advised that if you cooperated with the District Attorney, your sentence would go ligher on your arson case?

A No.

Q Were you given any indication?

A No.

Q No?

MR.KAVANAUGH: Now, Judge--

THE COURT: Mr. Kasner, please, do not make any further comments or asides after the witness has responded. The jury is again instructed to disregard any such comment.

Q Do you expect your testimony today to inure to your benefit in connection with your sentence?

A I hope so. I'm trying to help myself.

Q I understand that.

THE COURT: Now, again, I admonish you, Mr. Kasner.

Q And, you would say anything on the stand today that would serve to help you help yourself, wouldn't you?

MR. KAVANAUGH: Objection.

A Yes.

THE COURT: Objection sustained.

If you will put that in the form of a question, I will take it; I mean, a real question.

MR. KASNER: I thought it was a question, your Honor.

THE COURT: No, it was an argument, more than a question.

MR. KASNER: Your Honor, I think the question speaks for itself.

THE COURT: I will ask the question then, if you wish. Would you do anything on the stand

A Yes.

Q Did you give an interview to the fire marshal on August 16, 1972?

A Yes.

Q Were you asked the following question and did you give the following answer?

"QUESTION: Russo: Let's get to the fire at 410 and 412 West 42nd Street. What happened with that fire?

"MORTON: The fire at 410, that's when I broke out the window and went inside. I was drunk then. I was really bombed. I broke out the window. I went ~~in~~ inside and I poured gas. Chris mixed up all kinds of stuff, I just poured it out of the bottle all over the rug, where ever I thought it would do the best job."

Were you asked that question and did you give that answer?

A Yes.

Q Well, were you drunk or weren't you drunk?

A I wasn't drunk. I lied that I was drunk.

MR. KASNER: Exactly the same questions.

THE COURT: I sustained the objection.

MR. KAVANAUGH: Yes, sir.

REDIRECT EXAMINATION (continuing):

BY MR. KAVANAUGH:

Q Now, just a few more questions, Mr. Morton.

Have you, at any time, by either myself or Mr. Jacobs, been promised anything for testifying in this case?

A No.

Q Do you expect to gain anything by testiiying here?

A Sure.

Q What do you expect to gain?

A I expect somebody to help me.

Q But, no one, either myself nor Mr. Jacobs has ever promised you anything; is that correct?

A That's right.

THE COURT: You mean, you hope but you don't expect.

THE WITNESS: What's that?

THE COURT: Rather, you hope and expect but nobody has promised you anything.

THE WITNESS: Yes.

MR. KAVANAUGH: Thank you, your Honor.

No further questions.

RE-CRSSS-EXAMINATION

BY MR. KASNER:

Q Mr. Morton, did you testify yesterday that you lied to Mr. Detsky, who was then your lawyer, and told him that you had nothing to do with the fires in order to induce somebody to put up bail money for you and get you out of jail; is that correct?

A Yes.

Q Now, would you lie here today in order to induce the District Attorney to let you plead guilty to a lesser offense and give you a short sentence of which you havealready served a year and a ~~xxfifx~~ half?

A No.

Q Well, you said you lied to your own attorney--

MR. KAVANAUGH: Objection.

THE COURT: You're just arguing with

Geisha House prior to your arrest in August of 1972?

A About three months.

Q Who were you employed by, if you know?

A George Kaplan, Jerry Gomberg.

Q On July 25th, 1973, in the morning of July 25, 1973, did you have occasion to enter a ~~xxxxx~~ massage partlor located at 436 West 42nd Street here in the County of New York called the French Model Studio?

A I did.

Q Where did you go in relation to that massage Parlor Mr. Jones?

A To the front of the door.

Q When you went to the front of the door, what, if anything, did you do?

A Poured gas on the front of the door, lit it.

Q Now, where did you get this gas from?

A From the Geisha House.

Q When you lit this gas that was on the ~~fixx~~ door what happened?

A It was a big place.

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THE COURT: What happened?

THE WITNESS: It was a large place. There was enough gas to create a fire.

Q After you lit this what did you do?

A I went back to the Geisha House, called Dexter Morton and Dexter came down. He told me, he said well, you didn't do it --

Q The only thing you can testify to here, Mr. Jones, is exactly what you observed and what, if anything, any of the defendants may have said to you. Anything that one of the witnesses said to you cannot testify to at this time.

Mr. Jones, why did you go into the massage parlor, the French Model Studio, why did you go in there?

A On orders from George Kaplan.

Q When did Mr. Kaplan order you to go to 436?

A The night before.

Q The night before?

A Yes.

Q Where were you when he ordered you to do this?

A In the Geisha House.

Q What, if anything, did he say to you, if you recall?

A He told me, he said I want you to go down and put a scare into those people so they will know that we mean business.

Q Was anyone else present at that time?

A Yes, there was.

Q Who?

A Marty Hodas, Jerry Gomberg.

Q Now, did Mr. Gomberg say anything to you?

A Yes, he told Dexter it should have been done along time ago.

Q At any time did anyone mention to you any money?

A There was supposed to be money paid for that.

Q Did anyone mention that to you, did any of the defendants?

A Yes, they did.

Q Who?

A George.

Q What, if anything, did he mention

a figure to you?

A No, he didn't.

Q Now, you indicated that after you lit the match you went to the ~~Kat~~ Geisha House, called Mr. Morton, on July 25, 1973. Did you subsequently return to the French Model Studio with Mr. Morton?

A I did.

Q And, what happened when you went back to the Fench Model Studio?

A Dexter had taken a bottle of gas, went inside, poured the gas on the couch outside the wall and lit it, while I sat outside and watched him.

THE COURT: Who did this, you or Mr. Morton?

THE WITNESS: Mr. Morton.

Q Now, at this -- withdrawn.

You indicated to the jury you had been ordered by Mr. Kaplan to go to 436 West 42nd Street. Mr. Gomberg spoke to you. Did Mr. Hodas at any time say anything to you?

A No, he didn't.

Q Do you recall him ~~xxyxxxxx~~ saying

anything at all while you were there concerning 436 West 42nd Street?

A I do. He told George, I told you to have this done last week, and Chris was messing around the job, xxx him and Dexter.

MR. KASNER: Who said that?

THE COURT: He said Mr. Hodas said that. As I understood it, wasn't that your testimony?

THE WITNESS: That is x true.

THE COURT: Mr. Hodas told Mr, Kaplan it should have been done last week.

Q Now, Mr. Jones, you were arrested on August 16, 1972. Priorto being arrested, sir, did you have a conversation with any one in the fire marshals office concerning what happened at 436 West 42nd Street?

A I did.

Q And, did you tell the fire marshals at that time everyting that you have told this jury concerning what happened at 436 West 42nd Street?

MR. KASNER: Objection, Your Honor.

THEXCOURT I am objecting on one of two grounds. Either it is xx irrelevant

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the inside of the place; right?

A He was told to burn it down, a couple of days before that.

Q How do you know?

A Counselor, I heard it.

Q You heard what?

A I heard him, Mr. Kaplan order him and Chris to burn it down.

Q That was before he told you just to put a scare in them; right?

A Right.

Q Before he told you to put a scare in them, you heard who?

A Mr. Kaplan.

Q Mr. Kaplan tell Chris to burn the place down?

A Chris and --

MR. KAVANAUGH: Your Honor, excuse me. I assume counsel is attempting to recollect this witness's testimony. I believe a few seconds ago, he said Dexter and Chris. I would like that to be correct if he is going to lay this question before the jury.

THE COURT: Instead of Chris you mean?

MR. KAVANAUGH: Both, Chris and Dexter. I think the record will reflect that.

Q A few days before you were told to merely scare them with a charring of the front door?

A Right.

Q You heard Mr. Kaplan tell who?

A Dexter Morton and Chris Hatton. The only reason it wasn't burned down, because there is a [illegible] that lives in the church there.

Q After this instruction to Chris and Dexter, you say you overheard the instructions were changed, weren't they?

A They were, to my knowledge.

Q To your knowledge, because they told you just to scare them?

A Right.

Q They still wanted the place burned down, they wouldn't have told you just to scare them, they would have told you just to burn the place down, wouldn't they?

MR. KAVANAUGH: Objection.

A They wouldn't want that.

MR. KAVANAUGH: Would you tell the witness if I make an objection not to answer

THE COURT: When you hear the district attorney make an objection, don't answer the question until I rule on it.

Q Mr. Jones, this conversation about burning places down, how many days before the fire was set did this conversation take place?

A Say that again.

Q This conversation about burning the place down with Chris and Dexter, how many days before the fire actually was set did this conversation take place?

A Two or three days.

Q And you were present when it took place?

A By accident.

Q By accident?

A Wait a minute now, just a second. I was present when?

Q When this conversation took place.

A That's right, by accident.

Q By accident?

A Right.

Q What was the accident?

A Because I wann't supposed to hear it.

Q You weren't supposed to hear it?

A No.

Q How do you know you weren't supposed to hear it?

A They were talking in private. I actually carried a broom to the back and I overheard the conversation.

Q Where did this conversation take place?

A In front of the Geisha House.

Q In the front of the Geisha House?

A Right.

Q You heard it by carrying a broom to the back?

A I was coming through the front door going to the back.

Q Then you were walking through; right?

A That is correct.

Q And while you were walking through, what did you hear?

A I heard Mr. Kaplan tell Chris and Dexter Morton "Why didn't you all burn the place down of the French Studio." This was a little after Mr. Comberg and Chris went and got the gas to burn it with.

Q Mr. Comberg and Chris went and got gas?

A And in his white and black Cadillac.

Q We will get to that later. We will get to that later. As long as you are mentioning it now, what was white and what was black about this Cadillac?

A The top of Mr. Jerry's Cadillac was black, and the body was white.

THE COURT: What Cadillac are we talking about here?

MR. KASNER: He claims Mr. Gomberg went with Chris Hart to purchase gasoline in a Cadillac which was white and black owned by Mr. Gomberg.

Q Is that your testimony, Mr. Jones?

A It is.

Q Now, you say Chris and Jerry got into the Cadillac and went to get the gas; right?

A I only saw them return.

Q You only saw them return?

A Right.

Q Do you recall testifying before the Grand Jury of New York County?

A I do.

Q On July 6, 1973?

A I don't know what date.

Q I am asking you why you called Dexter?

A I was told to call Dexter by himself. He told me to call him.

Q And you called Dexter?

A That's right.

Q What time was this?

A About 5 o'clock in the morning.

Q Five o'clock in the morning?

A Right.

Q What happened after you called Dexter?

A Dexter came down and the Fire Department was there. And he said, "Well, you didn't do anything." So he went inside with the gas and poured it, lit it, and we left. That's what happened.

Q Did you see him pour it?

A No, I was on the outside.

Q Did you see him light it?

A No, I didn't.

Q Why are you telling us about it?

A It had -- he had to pour it and light it because there was a fire right after that.

Q You didn't see him pour it?

A No.

Q You didn't see him light it?

A Right.

Q Right?

A That is correct.

Q All you know is he went inside the building?

A Right, with a bottle of gas.

Q Now, did you tell him that your instructions from Mr. Kaplan were only to scare the people?

A That's right.

Q Did you tell him not to make any fire inside the premises?

A No, I didn't.

Q Why didn't you tell him this?

A Say that again?

Q Why didn't you tell him what your instructions were from Mr. Kaplan?

A I told him what my instructions were.

Q Did you tell him he was wrong to go in and burn the place?

A No, I did not.

Q Were you afraid of Dexter?

A Not necessarily, no.

Q No?

A No.

A Yes, I know.

Q What did he say to you?

A He told me, he said well, you didn't do a good job. George will be angry in the morning when he comes down. So, he went inside.

Q Didn't you tell him that this is exactly what George told you to do?

A Just one ~~xxxx~~ moment.

Q Didn't you tell Dexter that you did exactly what George told you to do?

A Of course.

Q But, that didn't ~~xx~~ satisfy him?

A It evidently didn't.

Q Did he say to you I want it to be complete since you went this far?

A No, he didn't.

Q What?

A No, he didn't.

Q He didn't say that to you?

A I can't remember that.

Q Now, I'm taking you back to July of this year when you testified before the Grand Jury. Were you asked the following question, and did you give the ~~xxxxx~~ following answer: This is on Page 10.

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THE COURT: You mean, a few hours after the fire?

THE WITNESS: Right; it had taken place. Chris came from somewhere. Him and Dexter got into-- Dexter told him, he said, "You wouldn't do it so we had to do it," and they got into an argument.

Q Isn't it a fact that, as a result of your telling the fire marshals that Chris set the fire at the front door, you had to tell the fire marshals that Dexter came and had this conversation with Chris bawling him out for the bad fire he set?

A No, I didn't. I told the fire marshal about Chris setting the fire to keep from getting myself involved. That had nothing to do--

Q You told the fire marshal about Dexter complaining to Chris about the fire being set, ~~didn't~~ didn't you?

A That had nothing to do with it.

Q Now, when you said you were convicted of assault, would it be more precise to say you were convicted of aggravated assault?

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MR. KAVANAUGH: Objection.

THE COURT: Overruled.

If you look at the record, counselor, aggravated assault on my record was no conviction. It never went to trial.

Did you plead guilty to some crime?

THE WITNESS: I pleaded guilty to a misdemeanor asaault.

Q What did the District Attorney-- did the District Attorney or a fire marshal say anything to you after your August 1972 story in which you implicated Chris and kept yourself out of it, which made you change your mind and admit that you set the first fire?

A No, they didn't.

Q They didn't say anything?

A No.

Q You just, naturally, changed your mind?

A What else could I do? What evidence they had, what else could I do?

Q What evidence did they hae?

A I don't know. I know they had evidence.

Q What evidence?

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A I don't know.

Q Did they tell you what evidence they had?

A No, they didn't. All they said, "We got you dead to right," and that was it.

Q Before the August 1972 conversation with the fire marshals, didn't they also tell you they had you dead to rights?

A When was this?

Q Beofre you gave the August 1972 interview to the fire marshals, they didn't tell you they had you dead to rights?

A No. I was in the room, counselor. No, they didn't.

Q But, afterwards, they told you they had you dead to rights?

A I changed my story at the District Attorney's Office. It wasn't at the fire marshal's office.

Q You changed it when you got to the District Attorney's office?

A Right.

Q What did the District Attorney say to you

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before you changed your story?

A They didn't say anything to me. They told me my rights.

Q Did they advise you that it would pay for you to cooperate with them?

A No, they didn't. I don't remember that.

Q You don't remember?

A No, they never said that to me.

Q Did they advise you, knowing what you would say would be used or held against you?

A No, they didn't.

Q They didn't tell you that either?

A No.

Q Did they tell you that your coopération would be brought to the attention of the proper authorities?

A Yes, they did.

Q And, you understood that to mean what?

A Just what he said.

Q If you cooperated, they would go easy on you?

MR. KAVANAUGH: Objection.

A No.

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THE COURT: Overruled.

Q Isn't that what you understood it to mean?

A No, I didn't. The only thing I heard was, "We will speak to the judge about it." That's all. Anything else, I don't know.

Q The judge you are talking about is the judge who would be present in court?

A You know more about that than I.

Q At the time you were sentenced for the crime; is that correct?

A I don't know, counselor.

Q Which judge were they talking about?

A I don't know that either, counselor.

Q Do you know you are charged with arson?

A I do.

Q Do you know what possible sentence you could get for arson?

A I'm not a lawyer. No, I don't.

Q I thought you were reading law books in jail?

MR. KAVANAUGH: Objection,

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THE COURT: Don't argue with the witness, please, Mr. Kanner.

Q Do you know you can go to jail for up to twenty-five years for arson?

A No, I didn't.

Q You didn't?

A No.

Q How much did you think you could go to jail for?

MR. KAVANAUGH: Objection.

A I have no idea.

THE COURT: Overruled.

Q You mean, you had no idea how much you could get for this charge?

A I don't know. In stages, they vary. I don't know.

Q You have been in jail sixteen months on a charge of arson and in sixteen months on a charge of arson and you never bothered to find out how much you could get for that charge?

A In jail, it doean't mean going to law school, counselo.r

Trial Term,
Part 103,
111 Centre Street,
December 19, 1973.

THE CLERK: Continued case on trial, People against Gomberg, Hodas and Kaplan. Trial continued. Defendants are present, their attorney is present, the Assistant District Attorney is present and all the jurors are present.

THE COURT: Come up.

(Whereupon, a side-bar conference was held out of the hearing of the jury as follows):

MR. KASNER: Martha Valentine, who is Nick Valentine's common-law wife, was arrested for bribery, approximately, a year ago. She has not been, to the best of my knowledge, tried. She has not pleaded. The charge is still open against here.

I want to introduce this fact in evidence to show the interest of Nick Valentine testifying for the prosecution.

MR. KAVANAUGH: The only problem I have with that, your Honor, is that nowhere in the record of Nick Valentine's testimony is there ever any indication he was ever asked any

question concerning that, either by myself or Mr. Kasner, so I question the relevance of that question.

MR. KASNER: That's why we are getting back to it now. May I now have Nick Valentine recalled as a witness?

THE COURT: Where is he?

MR. KASNER: He said he was keeping him under police custody.

MR. KAVANAUGH: I didn't say that.

THE COURT: You come at the last moment with this?

MR. KASNER: I said, he should be kept available. I made a point of that on the record.

THE COURT: Why didn't you tell us yesterday?

MR. KAVANAUGH: Why didn't he ask those questions when he was on the stand before and if he can't give a satisfactory answer, he should not be allowed to recall him. I object to this.

MR. KASNER: If I forgot something and I have a witness who I made a point of keeping available for return and I made a point of it on his testimony and he's, supposedly, in police

custody--

MR. KAVANAUGH: He is not in police custody. That expired on Friday of last week.

MR. KASNER: I made a point of it.

THE COURT: What would you expect him to say?

MR. KASNER: He knows his wife, Martha Valentine, is presently under indictment for bribery and is facing--

THE COURT: I will let you ask her that.

MR. KASNER: She's not here.

THE COURT: I thought you were going to call her.

MR. KASNER: Martha Valentine?

THE COURT: I thought that's what you are talking about.

MR. KASNER: Not at all. All I want is on the interest of Nick Valentine. I either want to recall Nick Valentine or a stipulation from the District Attorney that she is under this charge and it is still pending. That's all I want.

MR. KAVANAUGH: Assuming I stipulate to that, are you going to allow counsel to comment on that, in light of the fact he never asked Valentine those questions? The only evidence we have that is in interest, is Mr. Kasner's opening.

He had that man on that stand for, at least, an afternoon. He had plenty of time to ask those questions and never asked them.

The last time I spoke to Nick Valentine, he called me the night before last. Whether he is still available, I don't know. I have real reservations with counsel making a big show he wants him back when he had more than enough opportunity to ask those questions.

THE COURT: It's getting so remote anyway.

MR. KASNER: The interest is remote?

THE COURT: I suppose if he had a great nephew and was in trouble, too, you would want him?

MR. KASNER: This charge grows directly out of the massage parlor operation we're talking about and the fire.

THE COURT: Denied. You have an exception.

MR. KASNER: I can't recall Nick Valentine?

THE COURT: No.

(Whereupon, side-bar conference was then concluded).

THE COURT: Good morning, ladies and gentlemen.

MR. KAVANAUGH: Your Honor, the People call Chief Heiden.

W I L L I A M T. H E I D E N, called as a witness on behalf of the People, was duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: Give us your full name and spell your last name.

THE WITNESS: William T. Heiden. H-e-i-d-e-n.

THE CLERK: Badge number?

THE WITNESS: 129.

THE CLERK: Rank?

THE WITNESS: Batallion Chief, Batallion 7, New York Fire Department, City of New York.

corroboration and the motive for the charges of his three fellow prosecution witnesses.

The next prosecution witness was Chris Hatton, alias Chris Hart, alias Chris Harton, alias Ball Man. This gentleman throughout his entire testimony kept reminding the Judge and everybody in the courtroom that he didn't want to say anything he didn't know since he was under oath. This paragon of honesty has been convicted of swearing falsely under oath, convicted for forgery, convicted for possessing stolen property and convicted for fraud. He admitted that both he and his fellow prosecution witnesses, Dexter Morton impersonated police officers. He admitted that when he was drunk his recollection failed him. He admitted destroying the Geisha House for $250 paid him by Nick Valentine. He admitted beating a 60 year old man, breaking his ribs, blackening his eyes and putting knots on his head; beating a Black man named Napoleon about two months ago putting him in the hospital and almost blinding him and striking a woman with his fists. His fellow prosecution witness, Earl Jones, states that he has been beaten by Mr. Hatton on various occasions and Mr. Hatton admits that he makes fire bombs with deadly ingredients and breaks up

store windows for little or no reason.

The third stellar witness in this star-studded cast is Dexter Morton, the principle witness in the crew. This felon has been convicted of burglary, petit larceny, receiving stolen goods, criminal trespass and bastarding. He has admittedly beaten one of his fellow prosecution witnesses, Nick Valentine over the head with an iron pipe. According to another prosecution witness, Chris Hatton, he impersonates police officers. He freely admits drinking with Chris Hart almost every other night and not being able to estimate how often he gets drunk. He admits that he is accustomed to carrying guns for which he has no license and his fellow prosecution witness, Earl Jones, says that he beats him fairly regularly.

Now, the last limb of this poisonous quadruped is known as Earl Jones, alias Cornbread. Now, this is a different kind of a character. He has to be more pitied than scorned. He is not the vicious wholely reprehensible character of the other three but he's fallen under the sway of the characters Morton and Hatton. The liquor which gave him the false courage to involve himself in these insane

acts of the arson is now depriving him. He has been pulled into the conspiracy of the trial through the sole instinct which drives him through life, the instinct for survival. Though he has been convicted of assault and disposing of mortgage property, he is a pitiable figure rather than a vicious person. He has accepted the beatings of Morton and Hatton with a truly pathetic stoism. Who will not pity a person when asked he was beaten severely by Dexter Morton and he answers, "Everybody hits you in the world". Nevertheless, this man did not hesitate in an attempt to exonerate himself to falsely accuse Chris Hatton of setting the fire in the French Model Studio. He readily admits by his actions and his words that he will do anything he can to survive. Why is he to be pitied? He cannot be believed. This is your cast of characters. The parade of three Fire Marshals added nothing to what we already knew and to what the prosecution witnesses had already confessed; the intentional setting of fires in two premises.

Moment should be spent on the testimony of the Fire Marshals relating to the plastic jug which was never produced at the trial and whose contents

directly by Dexter Morton another prosecution witness who testified that Mr. Valentine does not know what he does when he's drunk.

Fifthly, he denies knowing a Johnny Shocker, going to Marty Hodas' officer after the Harem incident and going to the office with Johnny Shocker. Herbert Levin, the most clearly disinterested and believable witness in the entire case has testified just to the contrary. Thus, in the short time that Nick Valentine was on that stand he clearly lied about his criminal record, was contradicted directly by two prosecution witnesses and was contradicted directly by two defense witnesses.

The second and undoubtedly the most premeditated perjuror of all is naturally Chris Hatton. The prosecution witness who has already been convicted for swearing falsely under oath. He made five statements relating to the fires and admitted that four were false. He asked you to believe his most recent version. You have in evidence a handwritten statement which he admittedly gave voluntarily to which he denied all knowledge of the origin or perpetrators of either of the fires. He gave a statement to the Fire Marshal in which he said,

"I don't believe that they, the defendants, had anything to do with it. I said I don't know anything about the fire". In the second meeting with the Fire Marshal his story changed and his lies were limited to the following, "about making a fire bomb, about accepting money and about different conversations that were held by the defendants and myself". On his third interview, that was the district attorney in April of this year, he still did not have a story straight. His statement to Mr. Detsky on tape, he admits that it was all lies. Did he ask you to believe his fifth version at this trial? In August, 1972, he said to the Fire Marshal, in response to the following question:

"Question, Tell me about Marty Hodas, you must know something? Answer, No, I don't know. Question, are you sure you don't know nothing about Mary Hodas? Answer, I swear I don't. If I did, I would tell you".

He even contradicted himself during cross examination. First he testified:

"The last time I saw Mr. Hodas was about three or four weeks ago in his office with Mr. Gomberg,"

Later he gave the following answers to the

following questions:

"Question, Mr. Hatton, did you go to a book store at 259 West 42nd Street within the last two weeks? Answer. I would say yes. Question. Did you meet Mr. Hodas in that book store? Answer. Yes, I did. I saw him there. Question. What was the occasion of your going to the bookstore? Answer. I think I was drunk. I just walked in there. Question. Do you recall having a conversation with Mr. Hodas? Answer. No, sir. I saw him there though. I recall that. Question. You don't recall saying anything to him? Answer. I don't recall what I said, no, sir. Question. Do you recall asking him for $100? Answer. No, sir. Question. Do you recall telling him that if he didn't give you $100 you would say everything the district attorney wanted you to say at this trial? Answer. No, sir, I don't recall that, no, sir. Question, are you saying you didn't say it or are you saying you don't recall it? Answer. I didn't say that. I didn't believe I said that, no. Question. You don't believe you said that? Answer. I was drunk and I can't remember".

After testifying at length about all kinds of conversations prior to the fire at the Palace,

Summation - Defense

Mr. Hatton was asked the following questions and gave the following answers on cross examination:

"Question. How many conversations did you have about the fires with all three defendants prior to the fire at the Palace? Answer. I think it was around three. Question. When was the first conversation? Answer. Around the beginning of April, I believe. Question. What was said at that conversation, by who was it said? Answer. I can't really answer that. I know there was a lot of dissatisfaction about the prices and hurting the business of the Geisha House. Question. Now, the second conversation, when was that? Answer. On what date in question? Question. What date? Answer. I believe it was just prior to the fire, maybe a couple of days before the fire. I can't really be exact to say that was the date because I can't remember that well the date exactly. Question. What was said during the second conversation and by whom? Answer. I don't recall. Question. When was the third conversation? Answer. It was after the fire at the Palace".

Therefore, on cross examination he recanted each and every item of his testimony on direct

examination because the only conversations that he spoke about, that he said there were before the Palace fire was that somebody talked about dissatisfaction about the prices and hurting the business of the Geisha House but you didn't hear anything about fires here. Now, he gave you a big fire talk when he was on direct examination but when he got on cross examination, "I don't recall". He forgot everything. During the trial Mr. Hatton made up a story about Mr. Hodas; giving him a diagram for which he made a Molotov cocktail. When asked:

"Question. Who was present at the time?"
He answered, "I don't believe anyone was there except myself and Mr. Hodas."

When the district attorney asked about April, 1973;

"Anyone else there besides you and Dexter?"
He answered, "Earl, George and Jerry and the girl".

Can you, members of the jury, determine which of his fantasies are true. Even prior to his testimony with the district attorney, the Fire Marshals on August, 1972 asked Mr. Hatton whether he heard Marty Hodas tell Kaplan and Gomberg to get rid of the competition, his answer was:

"No, I don't see him. He says away from there." He then repeated, "I possibly said that, yes, because he is there very infrequently".

Now, you remember what Marty Hodas said when he got on the stand. He says he goes there a few times a year and Hatton told the Fire Marshal that that was so but all of a sudden during this trial he starts talking about three times a week, four times a week. He was there all the time; he's always seeing the three of them. That's not Hodas' business. Later, Hatton was asked the following question and gave the following answers:

"Question. Were you offered money to burn the place? Answer. Yes. Question. How much money? Answer. Five hundred dollars. Question. Were you offered five hundred dollars to burn the place? Answer. By whom? Question. By anybody? Answer. No, sir. I don't believe so. I know Dexter was offered five hundred dollars".

Do you notice the shift? In the beginning he's offered money and then later Dexter is offered money and if you recall Dexter's testimony he was offered $300 not $500. But these are mere details.

"Answer. No, sir, I don't believe so. I know

Dexter was offered $500".

Thus, in one fell swoop he reverses himself completely and contradicts himself. Not only does he contradict himself, but he also contradicts Dexter. Dexter who swears that he was offered $300 to burn the place. When asked whether he heard Mr. Gomberg offer Dexter Morton money to burn the Palace, Hatton says:

"Well, there was never really a firm commitment. There was $500 talked about. There was $300 talked about. There was a plane ticket involved in the thing and I guess they thought it was worth a couple--I don't want to say I guess--I am not sure of the price".

He then is asked:

"Question. Where did Mr. Gomberg offer Mr. Morton money to set the fire and when and who was present? Answer. I don't recall that".

After testifying that each of the defendants came to him and offered him money, something completely inconceivable; remember when he was saying one came, the other came and a third came; each one offering the same money. On cross examination Hatton was asked the following question and gave the following

answers:

"Will you state when Martin Hodas came to you and offered you money to burn down the French Studio; where this conversation took place and who was present? Answer. I don't recall him asking me that, sir. Question. Would you tell me when Mr. Gomberg came to you and offered you money to burn down the French Studio, when this conversation took place and exactly who was present? Answer. I know it was in the Geisha House. I can't recall who was present or what the date was. Question. Can you tell me when Mr. Kaplan came to you and offered you money to burn down the French Studio and when this conversation took place and exactly who was present? Answer. I know it was in the Geisha House but something else before, I can't remember the date and I can't remember who was there".

Now, I can go into about 50 more examples of Chris Hart in action. Maybe I should. I'll talk as long as my voice holds out. Now, there is interesting conversations about how much money was paid to who for allegedly setting the fire at the French Studio. You will hear all kinds of testimony. This is with Chris Hatton:

"Did you say you got paid or didn't get paid $100 from Dexter Morton ofr making the fire bomb? Answer. I didn't receive any money for making the fire bomb. After the fire, Dexter gave me about 25 or $30 when he went out and made a bomb party, you know, drinking. Question. Thereafter, you spoke to Mr. Detsky and made a statement which was tape recorded? Answer. In your office. Question. Did you lie to Mr. Detsky at that time? Answer. Yes, sir."

And later:

"Q uestion. Did you speak to the district attorney in 1973? Answer. Yes, I did. Question. Did you tell him the whole truth? Answer. I didn't answer him the whole truth, no, sir. Question. Did you lie to him then? Answer. I didn't lie to him. I just didn't answer certain questions. I may have told him a lie, yes. Question. Prior to answering the district attorney's questions on April 19, 1973, were you advised by the district attorney, 'Nothing you say in this room will be used against you'? Answer. I believe I was. Question. Before you answered any questions on April 19, 1973, were you advised by the district attorney, 'You are not a

target of any investigation'? Answer. I believe I was. I am not sure."

Now, this is a man who has confessed to making a fire bomb for the destruction of the Palace Massage Parlor. He confessed to this. Now, the district attorney told him he's not the target of any investigation.

MR. KAVANAUGH: Objection, your Honor. Mr. Hatton did not tell Mr. Jacobs that he had made a fire bomb. The first time he testified to that was here and it was when Mr. Jacobs told him he was not a target to an investigation and Mr. Hatton said nothing would--that would implecate him to those crimes. Counsel is misleading the jury by reading those two portions of the testimony.

THE COURT: That's my recollection.

MR. KASSNER: I believe the jury can infer that before the witness took the stand, the district attorney knew that he was going to testify to that effect.

MR. KAVANAUGH: But at the time Mr. Jacobs told this witness he was not a target of an investigation was in April of 1973 when he made that admission, he made it on the witness stand and he

made it several days before in my office which takes us into December of '73.

THE COURT: The objection is sustained.

MR. KAVANAUGH: Thank you.

MR. KASSNER: Okay. Now, I will tell you that there is a man walking the streets of the City of New York right now named Chris Hatton who admits that he should belong in jail right now on an unexpired jail term which he walked out of. Now, I'm not listening--I'm not hearing the district attorney say that he objects to me saying that this man belongs in jail on an unexpired jail term, yet he is walking the streets of New York. He is an escaped prisoner and he is walking the streets of the City of New York. I'm waiting for the next objection, Mr. Kavanaugh.

THE COURT: Now, please, Mr. Kassner.

MR. KASSNER: Now, why is there an escaped prisoner walking into this Court getting on the stand and walking around New York? Does the law mean nothing? A man has been sentenced, he's been convicted; he was put in jail and he's walking around in the street.

"Question. Before you were questioned on that

"Question. Did the district attorney also promise you on that occasion, 'Any cooperation that you give us here will be brought to the proper authorities", I know that you are incarcerated now'? Answer. I believe that was said, yes, sir".

Now, you just found out why he is walking the streets of the City of New York despite the fact that he didn't finish his jail term.

"Question. Mr. Hatton, did you lie to the Fire Marshal about your putting together this bomb? Answer. I didn't want to go to jail. I didn't want to be arrested. Question. Now, the district attorney asked you before whether you were convicted of the crime of swearing falsely under oath, what was your answer? Answer. I made a false application to a United States passport. That was the crime I was convicted of. Question. Did you swear falsely under oath? Answer. I swore falsely under oath, yes, sir."

Now, we move to Dexter Morton. Now, Dexter Morton was the key around which these three were built. Unfortunately, he gotten enmeshed with the other two and the contradictions came through.

"Who gave you the money?" They are talking

about the money for the Palace Massage Parlor job. "Question. How much money did he give you?" Mr. Gomberg. "Answer. $200. Question. You indicated earlier that the agreement as you understood it was for $300? Answer. Yes. Question, is that correct? Answer. Yes. Question. What happened to the other $100? Answer. He gave it to Chris Hart. Question. Who gave it to Chris Hart? Answer. Mr. Gomberg."

Now, do you recall that Chris Hart said that he didn't get any $100? He got something like 30 or $40, 25 or $30 from Morton when they went out drinking after the fire.

"Question. Did you give Chris Hart or Chris Hatton any money? Answer. No."

Now, he denies giving the 25 or $30 that Chris Hatton said he gave him after the Palace fire.

"Question. Now, prior to setting the fire at 436 West 42nd Street, do you recall ever having any discussion with the defendant, Martin Hodas? Answer. No. Question. What type of crimes have you been convicted of, sir? Answer. Burglary and petit larceny and receiving stolen goods. Question. Have you ever been convicted of the crime of criminal trespass? Answer. Yes. Question. Did you ever talk

to him" that's Chris Hatton, "at all about anything? Answer. I talked to him last week. Question. Did you talk to him at that time about the case? Answer. No. Question. Why not? Answer. Because it, he was not concerned about this".

The testimony of Morton was that he met with Chris Hatton last week.

THE COURT: Just a minute.

MR. KAVANAUGH: I'd like him to finish, I'm about to raise an objection.

THE COURT: Yes, go ahead.

MR. KASSNER: He met with Chris Hatton last week and he didn't talk to him about the case because Chris Hatton wasn't really interested in the case.

MR. KAVANAUGH: Objection. Your Honor, I just ask you to instruct the jury it is their recollection that controls any testimony.

MR. KASSNER: I'm reading quotes from the record.

THE COURT: Well, it is a little more than that. I'm not trying to convince anybody as to where the truth lies or as to who said what as the district attorney has said, it is your recollection of the testimony that controls here. Now, if there is any

dispute as to what the evidence was in these matters, then Mr. Kavanaugh, you will of course have an opportunity to give your version also.

MR. KAVANAUGH: Fine, your Honor.

MR. KASSNER: Your Honor, please, I'm reading direct quotes from the record. I'm not imagining these things.

THE COURT: All right, proceed. I haven't made any contrary statement.

MR. KASSNER: "Question. Do you feel giving testimony here today will help you get out of jail? Answer. Not as I know of but I hope something might happen. I am helping myself. Question. Do you dislike Nick Valentine? Answer. No?

Now, the man who is saying this is the man who hit Nick Valentine over the head with an iron pipe.

"Question. Did Nick Valentine call you names? Answer. Yes. Question. Did he call you racial epithets? Do you know what that means? Answer. Yes, I know that. Question. Did he call you racial epithets? Answer. Yes, he did. Question. Was he always intoxicated? Answer. All the times he called me names. He did not know what he had done when he was drunk. When he gets sober he says he doesn't know

what he said. So I take it at that. Question. Did Nick Valentine to your knowledge ever hire anybody to beat you up? Answer. Not to my knowledge".

And that will be contradicted later on by a statement that he made in which he told either the district attorney or the Fire Marshal that Jake LaMotta came in to break his arms or something like that. You will hear it later.

"Question. Now, prior to the time that you went away to Atlanta, was $10 taken out of your pay for approximately eight days toward the purchase of an airplane ticket? Answer. I can't remember".

Notice, he did not deny that. He said I can't recall. Now, they are making a big fuss of an airplane ticket that Dexter Morton wanted to visit his mother on Mother's Day. Now, when I asked him whether $10 was taken out of his pay for eight days, he says, "I can't recall". In referring to the conversation preceding the Blace fire:

"Question. Was any price set? Answer. Yes. Question. How much was the price? Answer. $300. Question. Was Chris present when the price was set? Answer. Yes".

Now, remember, Chris said he doesn't recall if

he was present but he knew the price was $500. Now one says he was present at the price was $500 and the other says $300. Just details. But if you-- but if all of the details are lies, why should you believe the one thing that is a negative that can't possibly be disproven.

"The Court. Does it indicate that you wish to change your testimony in any respect? The Witness. The only thing I have to say is that he, Jerry Gomberg, gave me the $300 and like I said, that I gave him, Chris Hart, $100. I admit telling him to give him $100 because he gave me the $300".

Before, he said Jerry Gomberg gave him $200 and Chris Hart $100; $100 Chris Hart never says he got-- says he never got. Now he says that Gomberg gave him the $300 and he gave Chris Hart $100, which Chris Hart claims he never got.

"Question. Are you saying that somebody gave you $300 now? Answer. Not somebody. Jerry Gomberg. Question.He did not give $200 to you and $100 to Chris Hart, as you said in your testimony? Answer. He gave me $300".

Now, he's back to the $100 and $200 instead of $300 with him giving him $100. In any event Chris

Hart says he never got the $100.

"Question. Now between February, 1972 and May 9, 1972, did you ever have any conversation about the Palace with Mr. Martin Hodas? Answer. No. Question. Mr. Morton, did you ever deny to any one that you ever set the fire? Answer. Yes, I denied it. Question. Did you ever hear anybody offer Earl Jones to burn the place? Answer. No. Question. When you made the fire at 436, you weren't even drunk? Answer. No. Question. Did you frequently drink with Chris Hart? Answer. No".

Remember that no because it will come back to haunt.

"Question. Did you frequently drink with Chris Hart in the 140 Bar? Answer. Yes. Question. How frequently? Answer. Almost every other night. Question. Every other night? Answer. Yes. Question. How frequently would you say you got drunk? Answer. I don't know. Question. Every other night? Answer. I don't know. Not every night. Question. Were you accustomed to carrying guns? Answer. Yes. Question. Did you have a license for the gun? Answer. No. Question. Now, do you know where the gasoline you used to burn 436 West 42nd Street, came

from? Answer. No. Question. All you know is that you got it from Earl Jones? Answer. Yes. Question. Did Earl Jones tell you where he got it from? Answer. No."

Here is an interesting piece:

"Question. When was the last time you were questioned by the district attorney? Answer. Last week. Question. Did they ask you to tell them about the story of the fire last week? Answer. No, he already knew. Question. Did he show you your Grand Jury testimony last week? Answer. No. Question. Did he show you any statement that you had made last week? Answer. No. Question. What did you do there last week with the district attorney? Answer. He was telling me I would be going to trial soon. Question. That's all that was said? Answer. That's all. Question. That's all, is that correct? Answer. Yes. Question. How long did the interview take? Answer. About 30 minutes".

Now, we had an 30 minute interview when absolutely nothing was said except that he was told he was going to trial next week. You can guess what went on in that interview. All I know is that Dexter Morton doesn't want you to know what went on

at that interview.

"Question. Do you expect your testimony today to inure to your benefit in connection with your sentence? Answer. I hope so. I'm trying to help myself. Question. And you would say anything on the stand today that would serve to help yourself, wouldn't you? Answer. Yes".

How can you believe the man?

"Question. Now, you have testified that for $100 you were willing to burn up the French Studio, is that correct? Answer. Yes. Question. Despite the fact that there could have been people living on top of it, is that correct? Answer. Yes. Question. And for $300 you were willing to burn up the Palace Studio despite the fact that you knew there were people living on top, is that correct? Answer. Yes. Question. Mr. Morton, was it customary for you to borrow money from George and Jerry against future wages, $10, $20, $5? Answer. Yes. Question. Most of the time you were ahead of them, you owed them some money? Answer.w Yes. Question, Now, when you were discussing the conversation which preceded the Palace fire in your interview with the district attorney in April of this year, were you asked,

'Question. Was Hodas present'and did you give the answer', 'Answer. No, he wasn't even around'? Answer. Yes. Question. Do you again in April of 1973 interview with the district attorney, were you asked the following questions and did you give the following answers:

'Question. Does anybody to your knowledge know about the plans of Gomberg and Kaplan with you and Jones setting these fires? Anybody besides Kaplan, Gomberg, and Chris and Jones and yourself? Answer. Not that I know, Mr. Russo, because if they do, Kaplan probably told them that we don't know anything about it'.

Were you asked that question and did you give that answer? Answer. Yes. Question. Did you give at any time tell the district attorney in your interview of April 19, 1973 that Mr. Hodas hadn't the vaguest idea that the fires were going to be set or were set? Answer. No. Question. Did the district attorney on two occasions ask you:

'Was Mr. Hodas present at any of these conversations?' And you said, 'No'.

Is that a fact? Answer. Yes. The Court: Did you implicate Mr. Hodas at all at that time; that's in the District Attorney's office in April of 1973?

The Witness: No."

The witness then testified that he didn't implicate Mr. Hodas in the district attorney's office because he was afraid Mr. Hodas--excuse me--afraid of Mr. Hodas.

"The Court: Are you still afraid of Mr. Hodas? The Witness; Yes. Question. Why did you give your testimony in Court today that you refused to give to the district attorney in April 19, 1973? Answer. I don't know".

Nothing they say makes sense.

"Question. Were you drunk at the time you set fire to the Palace? Answer. No. Question. You were sober? Answer. Yes. Question. Did you give an interview to the Fire Marshal on August 16, 1972? Answer. Yes. Question. Were you asked the following questions and did you give the following answers?

'Question: Russo: Let's get to the fire at 410 and 412 West 42nd Street. What happened with thatfire? Morton: The fire at 410, that's when I broke out the window and went inside. I was drunk then. I was really bombed. I broke out the window. I went inside and I poured gas. Chris mixed up all

kinds of stuff, I just poured it out of the bottle all over the rug, where ever I thought it would do the best job".

Were you asked that question and did you give that answer? Answer. Yes. Question. Well, were you drunk or weren't you drunk? Answer. I wasn't drunk. I lied that I was drunk".

Now, why is it significant that he thought he should lie that he was drunk?

"Question. You liked to the fire marshal that you were drunk? Answer. Yes. Question. I understand. On April 19, 1973, did you give an interview to the District Attorney? Answer. Yes. Question. In the course of that interview were you asked the following question and did you give the following answer:

'Question: When you say he, who are you referring to, Chris? Answer. Yes. He made the bomb up and all that, so I went to this bar, the 140 Club on West 44th Street, got to drinking heavy, got a little drunk, you know, and was coming back to 414. I glanced at the place, you know, and I said, well, this is the kind of night to do it because there is no one around so I had a

key to the place, opened up the place, went inside.'"

So you saw how he selected the time to do it. Got a little drunk and wanted to blow up a place. So he said he was sober but he did the Palace job. The Palace job. He said he was sober when he did it but he lied to the fire marshal and he lied to the district attorney; that told him he was drunk when he did it.

"Question. And was that when you burned down the Palace? Answer. Yes. Question. Now, you told the fire marshal you were drunk, bombed out of your mind and you say that was a lie. Was it also a lie when you told the district attorney that you were drinking heavy and you were drunk? Answer. Well, I was drinking; heavy and drunk was a lie. Question. The drunk was a lie to the district attorney? Answer. Yes. Question. Did you on direct examination say that George Kaplan asked you to make the fire and Jerry Gomberg agreed to pay you $300 for making the fire? Answer. Not that I know. Question. You didn't say that? Answer. Not as I know. Question. Did you say on April 19, 1973 the following answer to the following question in your interview with the District Attorney:

'Question. Who came to you? Answer. Mr. Kaplan. He came to Chris Hart and me and said I want this joint off the block. I am paying you $300. You can burn it out, you can tear it up. I just want them out of business.'

Question. Was that your statement to the District Attorney? Answer. Yes. Question. You didn't say anything about Jerry Gomberg being there? Answer. Yes. Question. In what statement did you say it was George Kaplan and not Jerry Gomberg who offered you the $300, to pay the $300? Answer. It was George Kaplan like I told you first. Question. And what--and when you said on direct examination it was Jerry Gomberg, is that, that was not correct, is that correct? Answer. I can't remember. I don't know. Question. Whose idea was it for you to go to Atlanta ? Answer. I wanted to go to Atlanta."

They are trying to build something big of him going to Atlanta and they were trying to ship him out of town. He admits clearly in this trial that he wanted to go.

"Question. Do you claim you were paid the $100 for making the French fire? Answer. I wasn't paid the whole $100. Question. How much were you

paid? Answer. I was paid about $30 or $40. Question. So, Mr. Morton, it is your testimony that you were paid 30 or $40 for the French fire. Was that before the fire or after the fire? Answer. Before. Question. So you were paid nothing after the fire, is that correct? Answer. Yes. Question. Do you recall the testimony with Mr. Russo, a fire marshal, on August 16, 1972? Do you recall being asked the following question and giving the following answers:

'When did they pay you? Answer. They paid me the next night. Question. When? Before the fire or after the fire? Answer. They gave me half before the fire and half after the fire. Question. How much did they give you? Answer. They gave me about 40 or $50. And after the fire they gave you how much? Answer. After the fire they gave me $50.' Question. Do you recall being asked those questions by the fire marshal and giving those answers to the fire marshal? Answer. The only thing I remember saying was that they gave me half. They didn't give me the other half. Question. You don't recall those questions and answers? Andwer. I dont' recall the last about the $50".

Now, I don't know how much further to go with Dexter Morton. The inconsistencies go straight through; for $100, for $30, for $40.

"Question. In other words, you never told them they paid you $100? Answer. I said that they were supposed to give me $100. Question. Did you say they gave you $100? Answer. Not to my recollection. Question. Did you hear what I just read? Answer. Yes. Question. Did you make those answers to Mr. Russo? Answer. Yes."

He told Mr. Russo he got $100 and then $40.

"Question. In your testimony yesterday you said that you didn't know Nick Valentine paying anybody to beat you up, is that correct? Answer. Yes. Question. On April 19, 1973 were you asked the following question by the district attorney and did you give the following answer:

'Question. Were they partners? Answer. Yes, they were partners. Then they were partners with Marty Hodas. I was running the place that was burnt up, 436, so Valentine came down to 436 and he started to talk to me for a minute. At that time, Valentine owned the place, but Kaplan's name was in that place, so Valentine tells me that I was working for those

Jew" blank-blank " but you wouldn't work for me no more, and he called me a" blank "this and a" blank "that. So he wanted Jake LaMotta to jump on me and break my arms--' et cetera.

Do you remember the question and answer? Answer. Yes. Question. Would you say at the time of the arrest on August 19, 1972 that you were a friend of Mr. Nick Valentine? Answer. Yes. Question. Did you ever strike him at all? Answer. Yes. Question. What did you strike him with? Answer. A pipe. Question. Do you expect to get anything by testifying here? Answer. Sure. Question. What do you expect to gain? Answer. I expect somebody to help me. Question. Did you say you lied to Mr. Detsky that you had nothing to do with the fires and somebody would put up bail money and get you out of jail, is that correct? Answer. Yes. Question. Now, would you lie here today to induce the district attorney to let you plead guilty to a lesser offense and give you a short sentence of which you have already served a year and a half? Answer. No."

Now, do you believe that? Do you believe that if he lies to his own lawyer in the hope of getting out on bail he won't lie to you in the hope

of getting out on bail, he won't lie to you in the hope of getting out of jail?

"Question. Mr. Morton, to the Grand Jury, you said you were paid $100 for the French fire. Today in Court you said you were paid $30 or $40 for the French fire?"

Now, they were both under oath.

"Question. Do you understand what perjury means? Answer. Yes. Question. So you either committed perjury before the Grand Jury or perjury before this Court? Answer. No. Question. Do you have an answer? Answer. No. Question. Then you don't understand what perjury means, Mr. Morton. No response."

All right, the last character is Jones. Now you recall Jones' testimony. I don't know whether I should review it. I don't think it makes any sense to review it and remember what he said. You remember he made up a story about Chris lighting the fire in the French Studio. He carried on that story until finally he changed his story and said that he lit the French Studio. By the end of his testimony he didn't know what happened. He didn't know where it happened and he didn't know how it

happened.

"Question. Did Dexter tell you he set the fire to the Palace? Answer. No, he did not, counselor. I know nothing of it. Question. He never told you? Answer. I know nothing of the Palace. Question. I would like to call your attention to the following questions and answers which you gave to the fire marshal:

'Question. All right, 410, or 412 or 414? Answer. Dexter Morton told me he set that fire himself, got paid and went to Atlanta, Georgia".

Do you recall giving that answer? Answer. I don't know. It is 16 months ago. I don't recall. Question. Now, you have been in the same jail with Dexter Morton? Answer. Right. Question. You see him frequently? Answer. Every day. Question. You talk about the fire? Answer. You mean we speak of the case, counsel? Question. Yes. Answer. Of course. Question. Have you discussed this case with anybody? Answer. No, I haven't. Question. You have discussed it with the district attorney and that's the only person you've discussed it with? Answer. Yes. Question. Besides Dexter? Answer. Besides Dexter. Question. Now, when you spoke

to the fire marshal a month or a month and a half after the fire, did you ever mention Martin Hodas' name? Answer. No, I didn't. Not in the fire marshals office, no. Question." Do I have to refresh your recollection as to his college days or college degree in elementary education?

"Question. Did they tell you that your cooperation would be brought to the attention of the proper authorities? Answer. Yes, they did. Question. And you understood that to mean what? Answer. Just what he said. Question. If you cooperated they would go easy on you? Answer. No. Question. Isn't that what you understood it to mean? Answer. No, I didn't. The only thing I heard was, 'We will speak to the Judge about it.'"

That's all. Anything else, I don't know.

"Question. Is the best way you know of getting out of jail coming here and testifying to the way you testified to? Answer. Of course I expect to get something out of testifying".

Now, here is something that you should take note of.

"Question. Mr. Jones, you say you and Dexter Morton knew you were going to be questioned

by the fire marshal?"

This is before the arrest.

"Answer. Of course. Question. Just say whether you knew. Answer. Yes, right. Question. And you were together every day, is that correct, for three days? Answer. Right. Question. Now, you said that you lied to the fire marshal? Answer. That is right, that is correct. Question. And implicated a man who did not create the fire? Answer. Right. Question. Because you did not want to get involved, is that correct? Answer. Yes, that's correct. Question. Were you perfectly willing to tell the fire marshal that a man who did not set a fire set the fire rather than you who did set the fire, is that correct? Answer. Correct, that's correct. Question. That means you didn't want to get arrested for arson? Answer. Right".

Now, I'm going to briefly summarize Mr. Levin's testimony and Mr. Hodas' testimony.

Now, Mr. Hodas testified that in November, 1971 he was approached by Nick Valentine, Jerry Gomberg and George Kaplan who wanted to make a massage parlor out of two of his stores or one of his stores, the Geisha House. He signed an agreement for each one

tion. Also look at the witness and ask yourselves has that witness any interest or motive to lie testifying the way he is.

The answers to those questions, I think, if you take those questions and view it in the context of the case and the context of what happened, will provide you with the answer in this case as to whether or not they are telling the truth.

As to character. During the voir dire I indicated to you and some of the jurors were very frank when I indicated that the witnesses who would be testifying on behalf of the People all have criminal records. That has been brought out to you with a vengance.

I have never and I would never ask you to view these people as angels. There is no question that these people are of somewhat questionable character.

However, as I have said to you time and time again, it is important that you view that character in context with this particular case.

As Mr. Kasner at the end of his summation stated that he was indicating about the defendants

dicated to you that he had had, what I guess you would classify nicely as bad business relations with the three defendants.

It has been suggested to you that he has lied about these threats because he is seeking revenge. I assume that the reason. He is seeking revenge.

Of course, you may have recalled that in Hs opening Mr. Kasner made reference to the fact that Mr. Valentine had a relative under indictment and this is what the prosecutor is using to beat his head unconscious to make him testify as to what he has.

Of course, there is no proof to that. Mr. Kasner made no mention in his summation. Be that as it may, revenge.

You heard Mr. Valentine's testimony and he was very frak when he said, "I don't recall specifically what was said. Marty and George and Jerry sometimes their conversations run together. At the place I was told, in so many words, if you don't get your prices in line the same thing is going to happen to you that happened

to the Palace."

I asked him what Mr. Kaplan had said. He indicated Mr. Kaplan said, "You are stupid. You are stubborn."

Is this the testimony of a man seeking revenge or trying to tell the truth? If he was lying on that witness stand would he not have pointed the finger at each man and said Marty Hodas said to me I am going to burn you out unless you get your prices in line. Wouldn't he have attributed that kind of statement to Mr. Hodas? Wouldn't he have attributed that kind of clear, concise, direct statement to the other two defendants if in fact he was lying, if in fact he was seeking to seek out some kind of revenge against them because of a bad business deal? Or is he trying to tell you what he recalled concerning the type of threat that was made.

I would indicate also that Mr. Valentine, you may recall, after he finished his testimony, that I indicated on the record that I

have turned over to counsel a copy of the conversation between Mr. Valentine and the fire marshals, a tape, tape made September of 1972. But he is supposed to be lying to you. Of course, we heard nothing about that tape when he took the stand.

I think it is a fair inference of what he said, in light of the other cross-examination of the other witnesses, that what he said in September 1972 to the fire marshals, before these men were ever arrested, is the same thing that he told you on this witness stand.

What about Chris Hatton? Now, Chris Hatton poses a tremendous problem for me as a prosecutor and for you, I am sure, as jurors.

I think it has been made very clear to you that Mr. Hatton when he was initially interviewed by the fire marshals and when he was interviewed by Mr. Jacobs, indicated quite clearly that he had been offered, had been asked to set these fires but that he didn't make this bomb, that he didn't receive any

money.

Mr. Hatton testified and told you that he had lied to the fire marshals about that portion of what happened, that he had lied to Mr. Jacobs about that portion of what happened and his recollection.

He indicated to you the first time he told anybody about this was in my office a day and a half before he testified.

There is no question that Mr. Hatton is on that witness stand and has something hanging over his head. But is that motive, that motive to lie consistent with the testimony he gave?

He told you that I had promised him nothing. He told you that he took the stand to tell the truth. He told you the truth as best as he could recall and he indicated to you he had lied on certain occasions.

What you have to decide is whether or not what Mr. Hatton told you on that witness stand as it conflicted with his earlier testimony, whether those statements were made to deceive

you or whether the witness was honestly trying to recollect.

The type of person that was described to you by Mr. Kasner as he pictured Mr. Hatton was Mr. Hattan when he took that witness stand and told you that he made that bomb. Would he have told you he received money? He was on the witness stand. He was asked to tell the truth to the best of his ability. He told you what he could recall about the incident.

Dexter Morton and Earl Jones. Mr. Morton and Mr. Jones, there is no question that both of these men represent very sad and somewhat pathetic characters. They are what is called insulation. They have been used to take the weight for what happened in this case.

There is no question, even according to their own testimony, that they are motivated to testify in this case not because they are concerned with cleaning up New York, not because they want to become good productive citizens, but they are motivated to take that stand simply because they

want to help themselves. They have a sentence hanging over their head and they are extremely concerned with the length of it. If it can help them get a lesser sentence they will take the stand. I can see that. I don't argue that point.

But you can't view their testimony, that motive to lie simply on what they told you here. You have got to remember that they told substantially the same story to you as they told the fire marshals in that recording.

That testimony that they gave to the fire marshals was consistent in that it implicated two of the three defendants in the commission of these crimes. That testimony was given to the fire marshals; one, before they were arrested; two, less than a month after the second fire.

You have to decide for yourselves whether at that time they had such a motive to lie.

The recorded statement in the fire marshal's office of all the witnesses is of extreme im-

A Sure.

Q And during that time has either Mr. Gomberg or Mr. Kaplan threatened you in any way if you failed to come in and testify at this hearing?

A No.

Q I'm sorry?

A No, sir.

Q No. And did any one, any one at all, ever threaten you with any type of physical harm or violence or with anything if you failed to come into this hearing today and testify as you so testified?

A No, sir. I felt bad about what I did.

THE COURT: The answer is no.

THE WITNESS: I'm sorry, your Honor. I'm sorry.

Q Last time you were here, you had an injury on the arm, I believe, I'm not sure. How did that happen?

A I poked my arm through a glass shower door.

Q And did that happen after you'd seen Mr. Kaplan and Mr. Gomberg or did it happen before?

MR. KLEIN: That should be stricken.

A I'll tell you how it happened.

MR. HYMAN: Your Honor--

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THE WITNESS: I'd like to tell him how it happened.

THE COURT: Strike that part of the question or strike the question at the moment.

MR. CAVANAUGH: I'll withdraw the question.

MR. HYMAN: I also ask that the implication be withdrawn.

MR. CAVANAUGH: Well, no. That's--I'm going to pursue this.

MR. HYMAN: If it is going to be pursued, then let it be pursued and let it be out in the open. If Mr. Cavanaugh wants to make allegations of this sort, I would like to have them on the table so we can deal with them. If not, I ask him to withdraw and apologize. I will not be party to anything in which a witness is intimidated nor would I have my people intimidate a witness. Mr. Cavanaugh is aware of that. I would like him to apologize or pursue it.

MR. CAVANAUGH: I have the same faith in counsel as does this Court, but I do not have the same faith in his clients.

THE COURT: Pursue the matter.

Q Has anyone threatened anyone near you, anyone that you know with any type of physical harm or violence or anything at all if you should fail to come into this courtroom and testify as you have so testified here today?

A No. No, sir.

Q Now--

A I poked my arm through a shower door.

Q Neither one of the defendants were in the shower with you at the time?

A I'm sorry, your Honor.

THE COURT: Just answer the question.

Q You poked your arm through a shower door?

A Yes.

Q Okay. That happened completely accidentally, correct?

A Yes, sir.

Q Now, Mr. Hatton, you indicated that at the trial that you falsified your testimony. Would you please tell the Court why you did that?

A Because you wanted a conviction of Marty Hodas and I think the assistant district attorney wanted a conviction. That's what I was made to understand.

THE COURT: Was that at the end or towards the beginning?

THE WITNESS: About the end, your Honor.

Q So when you say the tape -- do you understand my question, Chris, when I ask you the tape itself, you listened to the tape, is that a tape of the beginning part of the session where you're talking or is it that of the formal part?

A The formal part, halfway through.

Q So that occurred at the latter part of the meeting, towards the end of the meeting?

A Yes.

Q Now Mr. Hatton, there was some talk in court the last time about an injury to your arm. Would you tell the Court briefly, very briefly, how you sustained that injury?

A I was in, I believe it was room 936 of the Iravel Lodge on West 42nd Street, room 936, and I slipped in the shower and my arm went. They had a glass shower door and I cut my arm.

Q Did Mr. Kaplan or Mr. Gomberg have anything to do with that injury?

A No.

Q Have you been threatened in any way by Mr.

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Kaplan or Mr. Gomberg?

A No.

MR. KAVANAGH: Your Honor, I'm only going to object because we have been through this before. I don't know if this is proper re-direct-examination.

THE COURT: Well I don't know.

MR. HYMAN: I'll try and be brief, your Honor, if I can.

MR. KAVANAGH: I'll withdraw the objection.

MR. HYMAN: Your Honor, I might say I tried to read over the prior testimony and I'm not trying to be redundant. I'm going directly to what Mr. Kavanagh had asked on his cross.

Q Did anybody ever threaten you?

A No.

Q How did it come about that you had decided to give this recantation as you are now doing? How did you get in touch with us or what made you get in touch with us?

A I asked my friend Johnny, if he could get in contact with either Mr. Kaplan or Mr. Gomberg. I was in a very bad emotional way.

Q Why were you in a bad emotional way?

a case to investigate?

A Yes.

Q What year was that?

A I was assigned the investigation of the fire bombing of two massage parlors in Midtown Manhattan while I was an assistant in the Criminal Court Bureau. I believe it was in September or October of 1972. That's a rough guess, but that was while I was in the Criminal Court Bureau by the assistant district attorney in charge, Mel Glass.

Q And did there come a time when you met an individual by the name of Dexter Morton?

A Yes, sir. I can't recall the first time I met Mr. Morton. I think that the first time that I had a conversation with him concerning this case was after Christmas of 1972. I had seen him several court appearances because he had been indicted on a charge of arson and related to this case and at that time he had been represented by the firm of Kassner and Datsky. It was not until the firm of Kassner and Datsky had been relieved from representing Mr. Morton by Judge Harry Frank, around April of 1973, that I spoke to Mr. Morton.

Q Did you present the evidence of Dexter Morton

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out the fires by Mr. Kaplan and Mr. Goldberg. I indicated to Judge Frank that in my opinion there was a manifest conflict of interest in light of the fact that Mr. Dotsky was being paid by Mr. Kaplan and Mr. Goldberg, pursuant to that representation, Judge Frank ordered Mr. Kassner and Mr. Dotsky to withdraw as counsel of record and assigned an Appellate Division lawyer to both Mr. Morton and Mr. Jones.

Q Did there come a time in your investigation that you had a discussion with Mr. Dexter Morton?

A Yes. I had several discussions with Mr. Morton, the first one was with Mr. Krieger, this was in the office. I don't recall exactly when the first time I spoke to him. I do recall speaking at some length to Mr. Krieger, asking Mr. Krieger if Mr. Morton would be at all interested in cooperating with us in our investigation.

MR. KLEIN: Your Honor, there is a phone out in the hall. I told my secretary to call me there. I won't interrupt the Court.

THE COURT: All right, thank you.

A I had several conversations with Mr. Morton. I first approached Mr. Krieger or he approached me, I frankly don't recall which, but Mr. Krieger, we talked

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about it. I indicated to him that we were interested in talking to Mr. Morton, arrangements were made. Mr. Morton was brought to my office. The first time I actually spoke to Mr. Morton, the conversation was tape recorded in the presence of Mr. Krieger, his attorney, and also some police officers and I believe some fire marshals. At that time Mr. Morton had told us essentially, related essentially, what he had told the fire marshals in August.

MR. HYMAN: Objection.

THE COURT: On what ground?

MR. HYMAN: Your Honor, his characterization of what Mr. Morton said, I believe it should be what the transcript shows, not his characterization.

THE COURT: Well you don't want him to go through the whole statement, I assume. Overruled.

MR. HYMAN: Your Honor, may I ask that there be at least a date given as to when this, approximate date.

THE WITNESS: It had to be sometime in April, but I'm not sure when.

MR. HYMAN: April of '73?

THE WITNESS: I believe so, whatever the date

of the tape is, I don't recall.

Q Prior to your conversation with Mr. Morton, when Mr. Krieger was present in your office, did you ever have any conversations with Mr. Morton?

A Not that I recall, I frankly do not recall. I do specifically remember telling Mr. Krieger that after letting him listen to the tape of Mr. Morton's conversation with the fire marshals, that should Mr. Morton desire to cooperate that no specific deals concerning time limits or sentence or whatever would be communicated to Mr. Morton; that I would certainly be willing to make an appropriate arrangement with Mr. Krieger but that he was not communicate that to his client and that all I had asked him to do is communicate with his client that it was in his opinion his client's best interests to testify for us.

Mr. Morton came in, we had a conversation, after that or prior to it, I'm not sure which, Mr. Krieger and I talked about Mr. Morton testifying in the grand jury against Mr. Kaplan and Mr. Gomberg and Mr. Hodas.

MR. HYMAN: Can I ask your Honor again some reference point of dates. I'm a little hazy on this part.

THE WITNESS: I am not sure whether or not

the conversation concerning his testifying in the grand jury took place before I actually spoke with Mr. Morton or after. I frankly don't remember.

At that time, Mr. Krieger and I discussed it, I indicated to Mr. Krieger that if Mr. Morton would cooperate that I would, I thought it be appropriate to put a top of seven years, five or seven years on any plea that Mr. Morton would take involving the arsons.

But, again, I told Mr. Krieger I did not want that offer communicated to Mr. Morton with reason. I didn't want Mr. Morton, if he took the stand on the trial with reason if he took the stand he would testify to a promise of five years. Mr. Krieger agreed to that. Mr. Krieger indicated that he would tell Mr. Morton he thought it was in his best interests to testify.

I have had several conversations with Mr. Morton after the tape recording and I had several conversations with him prior to his testifying at trial. At no time prior to Mr. Morton testifying in court did I ever communicate any promise to him whatsoever except that I thought it was in my

of the man who put Nick Valentine out of business." That was the extent of his implication of Marty Hodas.

MR. HYMAN: I would ask all the characterizations about deeply implicated, I think that statement be rather implicating, be stricken as to Mr. Kavanagh's characterization of it.

THE COURT: Strike the phrase "deeply implicated."

Q Did you at any time in your conversations with Mr. Morton ever threaten him in any manner, shape or form to testify in a certain way.

A No, sir. In fact, if I say, Mr. McManus, I told Mr. Morton on several occasions, that I wanted him to tell it like it was at the trial. I was aware of inconsistencies within his own testimony, inconsistencies between his testimony in the grand jury and with the fire marshals. Inconsistencies with his testimony with Mr. Hatton and I never threatened him. I just indicated to him if these inconsistencies existed, if that was what his recollection was, that he was supposed to testify to that and I believe the Court record will bear that out.

I should also add this, after Mr. Morton had testified at the trial, well, quite often Mr. Krieger did not

answer the calendar calls of Mr. Morton's case when it was called during court calls so Mr. Jones' attorney, Mr. Martin Siegel, would stand up for both defendants with the consent of Mr. Morton and Mr. Jones and the only time that I ever communicated to Mr. Morton that I was going to recommend a conditional discharge was on the day that he took the plea, the day that he was paroled pending sentence, which I believe was a week after he had testified at the trial and I had communicated my intention of doing that to Mr. Siegel only on the day that Mr. Morton pleaded guilty, which was a week, I believe a week, after he had testified at the trial.

Up until this time the attorneys for Mr. Morton were under the impression that the district attorney was going to offer five to seven years and I never indicated anything about the conditional discharge.

MR. KLEIN: I will ask that be stricken, that he's now testifying to somebody else's state of mind.

THE COURT: Sustained. Strike it out.

Q Now, do you recall when was the first time you -- withdrawn.

Did you ever have a discussion or conversation with

Mr. Hatton, there are certain conflicts in your testimony with Dexter Morton. I'm not too bothered by any of them except for the fact that Mr. Morton says you made the fire bomb and I don't see any reason why he could say that unless it was true. Mr. Hatton at that time said to me, "I did not make the fire bomb. I don't know why he's lying about that." I said be that as it may, fine, we'll live with it. The following morning, which I believe was the same day or two days prior to his testifying, I'm not sure, Mr. Hatton came into my office. He was brought from the Traveler's Motor Inn by a fire marshal. He said to me at that time, "I've got to tellyou something." And he told me at that time for the first time that he had made the fire bomb which was used to burn out the Palace Massage parlor.

Q Mr. Hatton was not arrested though was he?

A Mr. Hatton was never placed under arrest. After he made that admission to me in my office, I frankly didn't know exactly how to handle it. I must in all candor indicate that I was primarily interested in presenting him in the most favorable light to the jury and I did not arrest him because I felt that at that point it would place before the jury another interest or rea-

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son for this man to lie. All I told Mr. Hatton was the same thing that I have told Mr. Morton, frankly, I wasn't interested in Mr. Hatton, I was interested in Mr. Kaplan, Mr. Gomberg and Mr. Hodas. But we never discussed placing him under arrest at all and that's the reason why I did not do so.

Q Did you ever make any promise or representations as to how you would take care of Mr. Hatton after he testified?

A Yes. I'm not sure if it was during his testimony or when he was finished, but out in the hall Mr. Hatton had communicated to me that he was very much afraid of what could possibly happen to him as a result of his testimony. I indicated to him that the District Attorney's office would be more than happy to fly him to any city in the continental United States. He indicated to me he wanted to go to Alaska. I said that we would arrange it. I also indicated to him we would get him a sum of money and I don't know if I said $200 to him or I said just a sum of money. Pursuant to that I went to Mr. Morgan, the administrative chief, administrative chief assistant, I believe that's his title; asked him for $200 for Mr. Hatton. He would only give me $100 and so Mr. Hatton, when he was finished

testifying and I frankly believe this was after he testified, but I don't, I honestly don't recall, after he testified Mr. Hatton was given a plane ticket to I believe Los Angeles so he could change where he wanted to go and I believe he was given $100.

Q Did there ever come a time that you became aware of the fact that Mr. Hatton had a parole violation against him?

A I believe I became aware of that while he was on the stand. Possibly shortly before, or shortly after. I frankly wasn't aware of that until we were in the middle of the trial and he told me about it, I didn't know anything about it.

Q Did you make any promises or representations about the parole violation?

A All I said to him, not to worry about it and that was all that was said. And as far as I know, that warrant is still outstanding for his arrest. We never had taken any action toward it at all. In terms of withdrawing it, revoking it, making any recommendation at all, we have done nothing, absolutely nothing to it. The only thing I'd like to add, there were certain allegations made by Mr. Hatton and I believe Mr. Morton is going to make them concerning meetings that were had

in my office prior to and during the trial in which Mr. Morton, Mr. Hatton and Mr. Jones and Mr. Valentine were present.

At no time did I ever have Mr. Valentine, Mr. Morton and Mr. Jones and Mr. Hatton in my office in front of my desk discussing the case. There is no question that those four men were in the vicinity of my office, but any time I ever discussed the case with any of the four it was always done with them alone, out of the hearing of the other.

The only exception to that was, I believe, after Mr. Hatton testified we were putting, Mr. Jones and Mr. Hatton were in jail at that time and in custody in a room at the end of the hall. Mr. Hatton wanted to stay in that room because there were fire marshals in the area and he was somewhat concerned for his safety. He wanted a bodyguard. At that point, when we came out, it was after his testimony, he said, "How did I do?" I said, "I think you did fine. There is nothing to worry about. I think you told the truth."

That was in the presence of Mr. Morton and Mr. Jones and some fire marshals and also Mr. Valentine. At no other time do I have any recollection of ever discussing this case with these people and I have a very distinct re-

collection of telling them never to discuss the case while they were testifying or discuss it at all and I took great pains to do that because of the inconsistencies in their testimony. There was no way I was going to effectively pattern the testimony.

MR. HYMAN: Objection to his speech on the stand, your Honor.

THE COURT: Sustained.

Q Did you at any time ever suggest to Mr. Hatton in any manner, shape or form as to the context of his testimony?

A No, sir, I did not.

Q Did you suggest to him in any way how he should testify?

A Only that I wanted him to tell the truth.

MR. MC MANUS: I have no further questions.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. KLEIN:

Q Mr. Kavanagh, as assistant district attorney you are a law enforcement officer, correct?

MR. MC MANUS: Objection.

Q Are you?

THE COURT: Well sustained.

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to apprehend or to lodge charges against Hatton?

A No sir.

Q When you found out that Hatton was a parole violator, did you take any steps to bring charges against him for that?

A No sir.

Q I believe you testified that before Judge Harry Frank, Mr. Kassner or Knssner and Detsky, were released as counsel and Judge Frank felt there was a conflict of interest?

A Yes sir.

Q What promise did you make to Morton concerning his case on sentence?

A Well, what do you mean what promise? What I would recommend at the time of sentencing?

Q Yes.

A That he receive a conditional discharge.

Q And you know that Mr. Morton is going to testify here today and recant his testimony, is that correct?

A Yes. I think that's a fair assumption.

Q And you're still going to recommend a suspended sentence?

A I'm not going to recommend a suspended sentence.

I'm going to recommend a conditional discharge.

Q You will recommend the conditional discharge?

A I made that agreement with Mr. Morton and I intend to live up to it.

Q When Mr. Morton came to you, excuse me, how many times did you speak to Mr. Morton before testifying?

A Mr. Klein, I frankly don't recall, quite a lot.

Q More than once?

A Yes sir definitely.

Q Now you recall his testimony at the trial?

A Yes sir. There is a lot. I recall generally, but most of it was cross-examination. I was objecting.

Q Well the part that I am concerned with is the part where he implicated Mr. Kaplan and Mr. Gomberg?

A Yes, I recall that.

Q You recall that testimony?

A Yes sir.

Q Now the first time that he came to you and he discussed the case with you, was his testimony, was his discussions, the same as his testimony later on?

A No sir.

Q The first time that he spoke to you about it, did he implicate Mr. Kaplan and Mr. Gomberg?

A Yes sir.

Q The very first time he also implicated them?

A Yes sir.

Q There was never a change?

A I didn't say that. You asked me if there was a change in his testimony and very definitely there was a change in his testimony. He initially said that he had been paid $300 by Mr. Gomberg to set the fire and that he had given $100 to Mr. Hatton in my office. He said that he was given $200 by Mr. Gomberg and that he didn't know where Mr. Hatton got the $100. So it was changed in that regard and there was a definite inconsistency between his testimony that he was to give at the trial and his grand jury testimony but he indicated to me that was his recollection and I told him that's what was to tell the jury despite the fact that there were inconsistencies.

Q Excuse me, Mr. Kavanagh, do you recall Mr. Hatton's testimony as far as Mr. Gomberg and Mr. Kaplan were concerned?

A Generally, yes, sir.

Q And you had spoken to Mr. Hatton also several times before testifying?

A Yes sir.

it but I'll live with it. And then I believe you testified he then went back to the Traveler's Inn or wherever he was staying, Riker's --

A It wasn't Riker's, he was in a hotel.

Q And I believe he had a conversation with fire marshals then?

A I have no idea.

Q Who brought him over to the office the next time?

A Fire marshals.

Q Fire marshals, and then after that he then came around and said I changed my mind, I had something to do with the fire bombing?

A Yes, the same testimony he gave here today. As part of his recantation, which he has now indicated is the truth.

Q Did you make any promise to Mr. Krieger, as attorney to Mr. Morton?

A I believe it was Mr. Krieger. If it wasn't Mr. Krieger, it was Siegal, I'm almost positive it was Mr. Krieger, that it would be a top of seven years or a top of five years, but I'm not sure.

Q For what, for pleading?

A If he pled guilty to the arsons that our recom-

mendation would be that his sentence should the Court deem it fit, that he be confined to a State prison and sentence not exceed either seven or five years, I'm not sure what it was. Then after the trial --

Q This was before the trial?

A Yes, before the trial.

Q This is before he testified?

A Yes, sir.

Q And then after you testified, you changed your mind and you recommended what?

A A conditional discharge.

Q A discharge. And did you also suggest that Mr. Krieger, before that, if Mr. Morton testified favorably for the prosecution that you might make a lesser recommendation?

A I never said that to him.

Q When for the first time didyou decide or consider making a lesser recommendation?

A When I got the investigation from Mel Glass. We knew at that time, I knew at that time, when I was first handed that file from Mel Glass that someone else was involved in those fire bombings and I knew that we only had two people who we had some leverage over, Earl Jones and Dexter Morton, and it was at that time --

Hatton, did you promise him money. Was it before he testified?

A It wasn't before, it was either during, Mr. Klein, or after. I frankly don't remember.

Q Did he ask you for money --

A And --

Q I'm sorry.

A When you say promise of money? It wasn't. I'm not sure. withdrawn. I'm just not sure. I don't recall when it happened. So many things were happening in this courtroom at that time and so many witnesses coming in and out. It was a rather dramatic, not dramatic, but tense trial. I don't recall when it happened but it happened in the hallway right here.

Q But the case wasn't over?

A Definitely it wasn't over.

Q And they were still in the courthouse?

A Yes sir. The case was not over at that time, no question about it.

Q And you don't know whether they had testified or not at the time you had this conversation?

A It was either during his testimony or after because that's the only time I had them in this building.

Q Which one are you talking about?

A Mr. Hatton.

Q How about the other fellow, Morton?

A I never promised Morton anything until Morton pled.

Q Now do you have a record, don't you have -- withdrawn.

Don't you have to make a request or fill out a voucher for money?

A Yes, there was a voucher filled out.

Q Is that how you get it, just filling out a voucher or do you have to get permission somewheres first?

A Well, in which case, in Mr. Morton's case it was different than Mr. Hatton's.

Q Either way.

A In Mr. Hatton's, because of the sum of money, I had to go to Mr. Morgan and he cut my request in half to $100.

Q How about the ticket to Alaska?

A No problem. I could get that on my say-so. I had the authority and did it.

Q What did Morton get?

A Morton received witness fees. He got a total of $44 but he was supposed to give half of that to Earl

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Jones. But I don't know if he ever did. He got that as witness fees. Our office has a policy -- well I had made a request about giving Mr. Morton money and I was told our office would make a distinction because Mr. Morton was a named defendant and while Mr. Hatton was technically just a witness and there were different policy considerations given. That's why I could only give Mr. Morton twenty some odd dollars and Mr. Hatton $100.

Q How much time elapsed between the time the request was made and the time he got the money?

A It was almost immediately. I went to Mr. Morgan's office immediately.

Q Did Nick Valentine, did you give Nick Valentine an airplane ticket or any money?

A He wanted an airplane ticket but we didn't give it to him. I believe we may have given him witness fees and I believe we gave him money while he was incarcerated as a material witness, but I frankly don't remember.

Q Do you recall telling Mr. Valentine the reason you are not going to get a ticket is because you lied?

A Well, yes, that's true. I did tell Mr. Valentine

the Court.

Q You didn't tell him if you cooperate we'll let you go?

A No, sir. I did not tell him that. In fact Marshal Russo placed Mr. Hatton technically under arrest. Mr. Hatton was released in the district attorney's office after we found out we didn't have enough probable cause to arrest him for a crime.

Q So you're saying Mr. Russo never told Mr. Hatton that he could go home and it would be all right.

A I didn't say that.

Q What did you say then?

A I said that Mr. Hatton was released from the district attorney's office, that when he was brought over to the district attorney's office Marshal Russo was under the impression that he was under arrest after he had a conversation with an assistant district attorney, that the district attorney's office, who spoke with Mr. Hatton as well as Mr. Marton and Mr. Jones. The assistant district attorney in charge refused to authorize the arrest of Mr. Hatton and Mr. Hatton wasn't arrested. Now whether he told him you're free to go because you helped us out, I don't know if that ever happened.

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Q You don't know -- withdraw that.

What did Mr. Russo tell you that he told Mr. Hatton?

MR. MC MANUS: Objection. Mr. Russo is taking the stand, Fire Marshal Russo.

THE COURT: No, overruled.

MR. HYMAN: Thank you, your Honor.

A I believe what Marshal Russo told me was that prior to speaking to each of the three, he had indicated to each of them that when he picked them up on the street that they had a solid case against them. That they didn't care whether they talked with the marshals or not, didn't make a difference to them, but if they did talk with the marshals, that it would certainly be taken into consideration and that was in effect what he told them prior to speaking to them and I believe those conversations took place in the street, in a car or possibly in their office. I don't know where they took place. Anyone of those three places.

Q You're saying no other promises were made, that Mr. Russo told you about?

A That's correct.

Q And what about when you met in April 1973, were you present with Mr. Jacobs with the questioning of Mr. Hatton, Mr. Merton and Mr. Jones?

A During some of it, not during all of it.

Q Were promises made at that time?

A The only promise that was made, nothing would be used against him, that he was saying in Mr. Jacobs' office and I believe that his cooperation would be in his best interests and that was it, but I frankly don't remember.

Q A promise was made to Mr. Hatton that nothing you say will be used against you?

A I believe it was, yes.

Q And that's when Mr. Hatton talked the second time when you were present?

A Yes, sir.

Q And at this time were Morton and Jones under arrest in April of 1973?

A Yes, sir.

Q When did they go to the grand jury, do you recall?

A Which case, the case or the case against Mr. Kaplan, Mr. Gomberg and Mr. Hodas.

Q Kaplan, Gomberg and Hodas?

A I believe it was July of 1973.

Q Well they didn't go to the grand jury on their own case?

A No.

Q And after Mr. -- after they went to the grand jury, when was the next time you spoke to them?

A I don't know. I was preparing for trial. I frankly don't recall.

Q Where did that take place?

A In my office.

Q Now, by preparing for trial, what do you mean?

A I discussed with them their testimony; went over their prior testimony, discussed with them the case. Prepared them for the testimony for questions I expected that they would be asked on cross-examination.

Q You were preparing the witness?

A Most definitely.

Q Preparing him so he would be most favorable for you?

A Not for me, for the People of the State of New York.

Q For the People of the State of New York. Excuse me, I forgot you were an assistant district attorney, Mr. Kavanagh.

Now you then, how do you prepare a witness?

MR. MC MANUS: Objection.

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THE COURT: Well, sustained. I mean if you want to ask what he said?

Q How he prepared this witness. I accept that, your Honor.

A Well, which witness, Mr. Morton or Mr. Jones or Mr. Hatton?

Q Mr. Morton.

A I went over Mr. Morton's inconsistencies. I told him that I wanted him to testify from his present recollection of the events of May and July of 1972. I asked him if his prior testimony refreshed his recollection concerning some of the inconsistencies, if they did, I said fine. If they didn't, I wanted him to stick to his recollection. I told him that he would be asked about these inconsistencies on cross-examination. I also told him that he was most certainly going to be asked about whether he expected to have anything to gain, gain anything by testifying.

Q And what did you tell him about that?

A I asked him what would you say and he said I don't expect to gain anything. I said, you got to be kidding. He said, what do you want me to say? I expect to get some time off of this, and I said tell the jury that.

the fire bomb.

Q Now after you saw Mr. Hatton, you also saw Mr. Innes?

A I don't know what order it was.

Q Did you yell at Mr. Hatton at all, I mean when you asked him about the fire bomb?

A I don't think I yelled at any of the three. It is not my nature.

Q Was Mr. Russo there?

A He may have been there some of the time. He certainly wasn't there all of the time. Most of the time I was there with them by myself.

Q Did he know that you wanted Chris to admit to the fire bomb, was he there?

A Yes, no question about it. I told Mr. Russo from the very beginning that I believed that Mr. Hatton had made up the fire bomb and I thought he was lying about that, apparently which has been borne out by his testimony here today.

Q Now, was there a time when you sought to get the testimony of the witnesses together with regard to the amount of money that was made?

A I don't know what you mean by get together.

Q Well there were various conflicts over the

amounts of money.

A Do you mean by discussing it with the three of them together in the same room?

Q No, discussing, let's take each individual first.

A Most definitely.

Q It finally resulted at the trial that they did give it essentially the same.

A They did not. A fair reading of testimony they were all over the place with that testimony. I think anyone who was at the trial would bear that out.

Q That didn't give you pause for doubt that all three of them were lying?

MR. MC MANUS: Objection.

THE COURT: Overruled.

A No doubt at all. If Mr. Norton and Mr. Jones were fabricating this, they were together in the Tombs, they could have put the money together, they could have aligned or completely aligned --

Q We are all beyond the Tombs. They weren't in the Tombs when they were questioned by the fire marshal?

A No, they were not in the Tombs when questioned by the fire marshal but they were in the Tombs for at least

a year and a half after that, prior to testifying in the trial.

Q Now, you say you spoke to each of them before trial and then they came to trial?

A Yes, sir.

Q Then you put them on the stand. Now, was there any time that they were all together?

A Yes, sir.

Q When was that?

A The first time was when Mr. -- it was just prior to testifying. We had brought Mr. Hatton in and Mr. Morton and Mr. Jones had been produced and there was quite a get together outside of the office, where they hadn't seen each other for approximately a year and a half.

Q What about Nick Valentine?

A They were definitely all together with Mr. Valentine in this room down at the end of the hall, which we had been using to secure the witnesses.

Q And this was at the district attorney's office?

A No, sir, right down here in the hall, down here. I don't really recall if Mr. Valentine was ever present when Mr. Morton, Mr. Jones and Mr. Hatton were all present with him. I know he was there when Mr. Hatton was

there on occasion and I believe he may have been there when Mr. Morton was there but I don't know if all four were together.

Q Was this during jury selection, pre-trial?

A Frankly I don't recall.

Q Was this over a span of a couple of days that they were secured in that room?

A Frankly, I don't remember. I'm sure it was but I don't recall. We had security problems with the witnesses. I preferred to keep Mr. Valentine in my office. He testified --

MR. KLEIN: May I ask that witness' preference or state of mind or conclusions be kept out of the record.

THE COURT: Well, he's trying to answer the question.

MR. MC MANUS: Most of this cross has been directly to Mr. Kavanagh's state of mind as to his beliefs.

THE COURT: Yes, overruled.

MR. HYMAN: How often do we get an opportunity to cross-examine a district attorney?

MR. KAVANAGH: Mr. Hyman, I don't recall. I frankly don't recall.

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Q Did you ever go visit them in that room?

A Which room, here in the court house?

Q Yes.

A Sure, definitely.

Q So there was a time when you were together with Chris, Dexter, Earl and Nick?

A Yes sir, that's right, Mr. Valentine was present with the three down there.

Q And you were there?

A Yes.

Q So that your testimony that you never had them any time ever together was not true?

A That's correct.

Q And did there ever come a time that you brought them to your office?

A All four together?

Q Well let's start first, you had Chris at your office, right, he was brought over?

A Brought over from, when he was committed as a material witness.

Q Right?

A Yes.

Q And he was brought over to your office?

A Yes, sir.

Q And I assume at that time and tell me if I

am wrong. Mr. Jones was also to be brought over and Mr. Morton was to be brought over?

A I just don't remember. I had these people over so many times. I frankly don't recall. I know that they were present together, Mr. Morton, Mr. Jones and Mr. Hatton on more than one occasion in the area of my office. No question about that.

Q And Mr. Hatton, well -- Mr. Valentine also may have been there, you're just not sure?

A That's correct.

Q And when they were together you may have walked in on them, you're just not sure?

A They weren't in my office. They were in an ante room outside of my office.

Q Well fine. But it is the district attorney's office?

A Yes. There were times that they were there when I wasn't there.

Q And there also were times that they were there and you were there in the district attorney's office all together?

A I don't recall Mr. Valentine always being present when they were all there. I told you that time and time again.

A Yes.

THE COURT: He has said there were occasions when they were together with him.

Q And you're not going to tell the Court definitively, Mr. Kavanagh are you, that during those occasions that you saw them together that you never mentioned anything about the case, are you?

THE COURT: Would you rephrase the question please? I'm talking about, "you're not going to tell us".

MR. HYMAN: Okay.

Q Are you, do you mean to indicate now that you no conversation about the case, any time you saw all these three individuals together?

A I don't know what you mean by conversation about the case. If you mean conversation about their testifying at trial, no question about it. I told them all three together on several occasions to tell the truth and not to discuss their testimony together. But as to actual conversations, as to what happened in May and July of 1972 and conversations that they may have had with Mr. Kaplan and Mr. Gomberg and Mr. Hodas, most definitely that was never done in the presence of all three of the witnesses while they were together.

THE COURT: He's the chief clerk of the District Attorney's office.

Q Now, this is an airline ticket given by the District Attorney's office. For what purpose was this ticket given?

A So he could fly out of town to Atlanta, I guess to where he lives. His home.

Q Obviously he didn't use it.

A Obviously.

Q And was Mr. Jones given a ticket?

A Yes.

Q And is it common for the District Attorney's office to give airline tickets to convicted arsonists?

A Only when they are afraid for their lives, Mr. Hyman.

Q Obviously Mr. Morton wasn't afraid for his life.

A That's obvious.

Q He stayed.

A He stayed.

Q So you didn't make any arrangements to get him out, you just gave him the means.

A Well, I couldn't force him to leave. That was entirely up to him. He wanted to go back to Atlanta, he

asked me for a plane ticket and I gave it to him.

Q And Mr. Hatton, is he also afraid for his life?

A That's what he told me.

Q And you gave him the ticket?

A Yes, sir.

Q And you gave to him to Alaska or Los Angeles?

A He wanted to go to Alaska and then he changed it and wanted to go to Los Angeles and then he talked about Denver.

Q Obviously Mr. Morton and Mr. Hatton were using the District Attorney's office to fly somewhere?

A Yes, sir.

Q They weren't really afraid for their lives?

A You'll have to ask them that.

Q Okay. We'll ask them that. Neither of them used the tickets to your knowledge?

A I believe Mr. Hatton sold his and you've got Mr. Morton's.

Q Now, when were Mr. Jones and Mr. Morton released from prison?

A They were paroled the day they pled, which I say, I believe is approximately a week after they testified.

Q During the time of trial were they under arrest?

Q Did the man make any exclamation or remark to you as he stabbed you?

A No, not that I know of. I didn't know. I really don't know.

But after he stuck me it got back to me that this guy paid him as soon as he stuck me, Nick Valentine.

Q Do you recall Mr. Fischer asking you other questions in a New York State Supreme Court, 60 Centre Street, on February 22nd, 1974 concerning that incident?

THE COURT: Is that Federal Court?

MR. KLEIN: No, this is another time after he was stuck in the neck, in the Supreme Court.

A Wait a minute. I think he said when he stuck me he said this is for Nick or something.

Q Who is this, the man who stuck you?

A This is for Nick.

Q Nick Valentine?

A Yes.

MR. KLEIN: May I ask the Court deem this marked in evidence. This is the transcript by the Supreme Court reporter.

THE COURT: What action is this?

MR. KLEIN: This is in the same case, but after

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Colloquy

The People, the defendant and his counsel have a right to address the Court.

Mr. District Attorney?

THE COURT: Do you wish to make any statement?

MR. JACOBS: Yes, your Honor. Your Honor, I would like my statements to be applicable to both defendants, if I can, at this time.

I have introduced myself to the Court previously. My name is John Jacobs.

Mike Kavanagh, as your Honor knows, is now assistant district attorney in Ulster County. From the inception of this investigation Mr. Kavanagh was in charge of this investigation. I also assisted him during the investigation that resulted in this trial and the conviction and I am fully familiar with the defendants, having tried them on a previous occasion, in the nature of their backgrounds.

I would just like to emphasize to the Court at this point that despite the fact that Mr. Kavanagh is not here, he is deeply concerned with your Honor's decision today and the sentence of the Court. He has been in constant contact with Mr. McManus and myself with respect to that.

As I told the Court earlier, he is scheduled to proceed to trial today in Ulster County.

It was District Attorney Hogan's decision that I not try this case, due to the fact that I tried Mr. Kaplan and Mr. Gomberg on an earlier occasion on the charge of bribery.

Mr. Hogan felt another assistant district attorney should try the proceedings and Mr. Kavanagh did. I just wanted to acquaint the Court with what my role was.

With respect to sentence. On March 12, 1974 District Attorney Richard Kuh came down with a procedure, the policy for an assistant district attorney with respect to plea bargaining and recommendations on sentence. His statement at that particular time was that an assistant district attorney should not become involved in either the plea negotiations or the sentences with certain rare exceptions.

I applied and sent a memorandum to the District Attorney of New York County concerning this particular case outlining what I consider to be the reasons why I should be permitted to address the Court with respect to sentence.

you have any objection then we will discuss it.

MR. KLEIN: Yes.

MR. JACOBS: The Probation report, your Honor, even though I have not had an opportunity to see it, I'm certain, does not reflect the confidential information provided by the Federal Bureau of Investigation, the Organized Crime Control Bureau of the Police Department, with respect to the defendants' involvement.

Both organizations indicated to me that they believe the two defendants, who are now before the Court, are front men for organized crime.

MR. HYMAN: Oh, my God, your Honor.

MR. KLEIN: I must object to this. Judge Frankel denounces this sort of innuendo we haven't been confronted with. We can't combat it. It is all hearsay.

THE COURT: The Probation report also, is it not?

MR. KLEIN: It is within the Judge's discretion to show it. Here the district attorney gets up and makes statements like that unsupported? How do I know anybody in the FBI spoke to him?

THE COURT: Your distinction between the Proba-

MR. HYMAN: Apparently, we have different eyes from which we see different things. I appreciate the distinction.

I was just asking a question, whether counsel for the district attorney's office could enlighten me.

MR. JACOBS: If the Court requests the district attorney's office to take a position with respect to sentence, the district attorney's office is prepared to take a position with respect to incarceration of these two defendants. I will not do so unless the Court requests.

THE COURT: I would like to hear what your recommendation is.

MR. JACOBS: Having had a conversation, your Honor, with Mr. Kavanagh, members of the Police Department, and the superiors of the District Attorney's office, we are recommending that your Honor sentence these two defendants to a substantial length of incarceration.

My understanding is that they have been convicted of two class B felonies, each carrying a maximum of 25 years. We are not making a specific recommendation as to the number of years, but we

I am innocent. I never paid nobody no money to burn any places. I am getting framed right here, your Honor.

It is unbelievable this thing can happen in the United States of America. I never was with organized crime, never. Never was with no kind of crime.

They tried to tell me, they tried to threaten my life. I had all kinds of police, all kinds of sit downs with the Police Department that I should testify against Hodas and they would go lenient with me. I never had nothing to testify in the first place.

I could have walked out of here a long time ago if I would have went with these DA's and captains they send around from the Task Force to talk to me about all these things. I denied it then and I still deny it. Here I am getting sentenced for something I never had nothing to do with. It is unbelievable.

THE COURT: Is there anything else you would like to say?

MR. GOMBERG: No, sir.

THE COURT: Mr. Gomberg, in addition to the